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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID MICHAEL SAHAKIAN,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Case No. CV _____
CR 02-938

**MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE BY A
PERSON IN FEDERAL CUSTODY
(FILED PROTECTIVELY) AND
NOTICE OF FILING OF SECOND
OR SUCCESSIVE PETITION IN
THE NINTH CIRCUIT**

**FILED PURSUANT TO JOHNSON V.
UNITED STATES**

Petitioner, by and through his counsel of record Brianna Fuller Mircheff, hereby files the attached motion to vacate his sentence. This petition is filed protectively, in order to ensure compliance with the one-year statute of limitations. Petitioner further notifies the Court that he has filed an application for leave to file the instant second or successive motion to vacate his sentence in the Ninth Circuit, Case No. 16-71950. Petitioner asks that this Court hold this petition in abeyance until such time as the Ninth Circuit grants his application. Petitioner will notify the Court if his application is granted.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: June 20, 2016

By /s/ *Brianna Fuller Mircheff*

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DAVID MICHAEL SAHAKIAN,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

Case No. CV

[CR 02-00928]

**MOTION TO VACATE, SET ASIDE,
OR CORRECT SENTENCE UNDER
28 U.S.C. § 2255**

Filed Pursuant to *Johnson v. United States*, 135 S.Ct. 2551 (2015).

Petitioner David Michael Sahakian, through undersigned counsel, hereby respectfully moves this Court to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255.

Respectfully submitted,

HILARY POTASHNER
Federal Public Defender

DATED: June 18, 2016

By /s/ Brianna Fuller Mircheff
BRIANNA FULLER MIRCHEFF
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- Exhibit B: Transcript of Jury Instructions (July 23, 2009, CR 6799)
- Exhibit C: Verdict, Exhibit 3 to Mr. Sahakian's Sentencing Memorandum (April 3, 2009, CR 6750-4)
- Exhibit D: Transcript of Closing Arguments (July 23, 2009, CR 6800)
- Exhibit E: Judgment and Commitment Order (April 28, 2009, CR 6765)
- Exhibit F: Transcript of Sentencing (October 29, 2009, CR 6818)

1 **MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE**
2 **UNDER 28 U.S.C. § 2255**

3 **I. INTRODUCTION**

4 Petitioner David Michael Sahakian, by and through his attorney, Deputy Federal
5 Public Defender Brianna Fuller Mircheff, hereby submits this motion to vacate, set
6 aside, or correct his sentence, based on *Johnson v. United States*, 135 S. Ct. 2551
7 (2015). In *Johnson*, the Supreme Court held that the residual clause of the Armed
8 Career Criminal Act, 18 U.S.C. § 924(e), is void for vagueness. *Johnson*'s reasoning
9 applies equally to the residual clause in the career offender guideline, U.S.S.G. §
10 4B1.2(a)(2). Therefore, in light of *Johnson*, Mr. Sahakian's sentence under U.S.S.G. §
11 4B1.1 was imposed in violation of the Constitution or the laws of the United States. Mr.
12 Sahakian therefore requests that this Court grant this motion, vacate his current
13 sentence, and re-sentence him.

14 **II. PROCEDURAL HISTORY**

15 **A. Conviction and Sentencing**

16 Mr. Sahakian was convicted, following a jury trial, of conspiracy to violate the
17 Racketeer Influenced and Corrupt Organizations Act, in violation of 18 U.S.C. §
18 1962(d) (“RICO Conspiracy”). (Ex. E, Judgment and Commitment Order.)¹ The jury
19 deadlocked on the remaining counts against him and the court declared a mistrial. On
20 the government’s motion, the court later dismissed the remaining counts. (Order of
21 Dismissal, April 22, 2009, CR 6761.) On April 20, 2009, Mr. Sahakian was sentenced
22 to 240 months imprisonment under the Sentencing Guidelines. (Ex. E.)

23 Relevant to this petition, the redacted first superseding indictment given to the
24 jury charged Mr. Sahakian with conspiring to violate RICO by participating in the
25 affairs of an enterprise through a pattern of racketeering activity, namely multiple acts

26
27

¹ Unless otherwise indicated, all citations to “CR” refer to the clerk’s record in
28 CR 02-00938, Mr. Sahakian’s underlying criminal case in this Court.

1 involving murder in violation of the laws of California, Colorado, Georgia, Illinois,
2 Kansas, Missouri, and Pennsylvania, as well as distribution of controlled substances in
3 violation of 21 U.S.C. §§ 841(a)(1), 843(b), and 846. (Ex. A, Redacted First
4 Superseding Indictment, at 3.)

5 The jury was instructed that the government had to prove four elements to show
6 that Mr. Sahakian was guilty of conspiring to violate RICO:

7 One, first, that the defendant knowingly agreed to conduct or participate
8 directly or indirectly in the conduct of the affairs of the charged enterprise
9 through a racketeering activity; Two, second, that an enterprise would be
10 established as alleged in the indictment; Three, third, that the enterprise or
11 its activities would [a]ffect interstate commerce; and, Fourth, that the
12 defendant would be associate with the enterprise.

13 (Ex. B, Transcript of Jury Instructions, at 54-55.)

14 The court distinguished the RICO conspiracy count from the substantive RICO
15 count by instructing that:

16 to convict the defendant on the RICO conspiracy offense charged in count
17 2, the government is not required to prove that the defendant or any
18 conspirator actually committed, caused or aided and abetted any
19 racketeering act. Moreover, it is not necessary in order to convict the
20 defendant of a charge of conspiracy, that the acts or purposes of the
21 conspiracy, whatever they may be, have been achieved or accomplished.

22 In other words, the ultimate success or failure of the conspiracy is
23 irrelevant. Rather, the conspiratorial agreement to commit a RICO offense
24 is the essential aspect of a RICO conspiracy offense[.]

25 . . .

26 [Moreover,] the government is not required to prove that the alleged
27 enterprise was actually established, that the defendant was actually
28 associated with the enterprise or that the enterprise or its activities actually

1 affected interstate commerce. Rather, because the agreement to commit
2 [the] RICO offense is the essence of a RICO conspiracy the government
3 need only prove that if the conspiracy offense were to be accomplished as
4 contemplated, the enterprise would be established, that the defendant
5 would be associated with the enterprise and that the enterprise or its
6 activities would affect interstate commerce.

7 (Ex. B, at 55-56.)

8 The court also instructed the jury that it must unanimously agree on the predicate
9 racketeering activity involved in the conspiracy:

10 Moreover, in order to convict the defendant of the RICO conspiracy
11 offense, the jury's verdict must be unanimous as to which type or types of
12 predicate racketeering act the defendant agreed would be committed, for
13 example, at least two acts of murder, attempted murder, aiding and
14 abetting[] murder or attempted murder, conspiracy to commit murder or
15 drug trafficking or any combination thereof.

16 (Ex. B, at 58-59.)

17 The court's instruction on racketeering act 37, charged in the substantive RICO
18 count, is an example of what the jury was instructed with regards to the predicate acts
19 involving conspiracy to murder:

20 [I]n order to find defendant Sahakian guilty of racketeering act 37, the
21 government prove the following elements beyond a reasonable doubt:
22 One, on or about the dates in the indictment; Two, defendant and at least
23 one other person entered into an agreement to kill black inmates
24 unlawfully; Three, defendant and at least one other conspirator specifically
25 intended to enter into an agreement with one or more persons for the
26 purpose of killing such black inmates unlawfully; Four, defendant and at
27 least one other conspirator harbored express malice aforethought, namely,
28 a specific intent to kill such black inmates unlawfully; and Five, an overt

1 act was committed in California by at least one of the conspirators who
2 had agreed and intended to commit the murders unlawfully. The term
3 overt act means any step taken or act committed by one of the conspirators
4 which goes beyond mere planning or agreement to commit a crime and
5 which step or act is done in furtherance of the accomplishment of the
6 object of the conspiracy. To be an overt act, the step taken or act
7 committed need not in and of itself constitute the crime of even an attempt
8 to commit the crime. Nor is it required that the step or act be a criminal or
9 an unlawful act.

10 (Ex. B, at 51-52 (citing California Penal Code § 182).)

11 During closing arguments, the government argued to the jury that it should find
12 Mr. Sahakian guilty of RICO conspiracy, stating:

13 If the thought you have is that I will get together with my AB brethren and
14 we will kill people, you are guilty of conspiracy without regard to whether
15 you are able to kill anybody. If you say we will get together and kill
16 Walter Johnson or John Gotti, that is a conspiracy and an agreement
17 without regard to whether the BOP manages to keep him separate from
18 you and keep you from killing him. *The thought is the crime.* That is
19 count 2.

20 (Ex. D, Transcript of Closing Arguments, at 93 (emphasis added).)

21 The jury was not given a special verdict form on which to indicate the two
22 racketeering acts it had unanimously agreed upon; rather the verdict form required the
23 jury only to select whether Mr. Sahakian was guilty or not guilty of RICO conspiracy.

24 (Ex. C, Verdict Form.)

25 The Presentence Report (“PSR”) concluded that Mr. Sahakian was a career
26 offender under U.S.S.G. § 4B1.1. First, it stated that “Application Note 1 to U.S.S.G. §
27 4B1.2 states that a ‘crime of violence’ includes the offenses of aiding and abetting,
28 conspiring, and attempting to commit such offenses. Moreover this note also

specifically includes murder, robbery, and aggravated assault as crimes of violence.” (PSR ¶ 36.²) Next, the PSR reasoned that Mr. Sahakian’s RICO conspiracy conviction was a crime of violence because he “conspired to commit acts of racketeering, including murder.” (PSR ¶ 37.) Finally, the PSR reasoned that Mr. Sahakian had at least two prior adult felony convictions for crimes of violence; a 1979 conviction for voluntary manslaughter, a 1979 conviction for two counts of robbery in Fresno County, and a 1980 conviction for robbery in Santa Clara. (PSR ¶¶ 38, 57, 60, 62.)

As the PSR calculated it, the career offender finding resulted in a significant difference in Mr. Sahakian’s sentence. The PSR found that Mr. Sahakian’s non-career-offender offense level was 19 because, given the lack of a special verdict form, there was no way to tell which two types of racketeering activity the jury had agreed on and therefore the probation officer used the generic baseline offense level applicable to RICO conspiracy, U.S.S.G. § 2E1.1(a)(1). (PSR ¶ 28.) The PSR calculated that Mr. Sahakian’s career-offender offense level was 32, however. This represented a swing of 13 levels. (PSR ¶ 40.) Because all career offenders are automatically placed in Criminal History Category VI, *see* U.S.S.G. § 4B1.1(b), and Mr. Sahakian was already in Criminal History Category VI, the career offender determination did not increase Mr. Sahakian’s criminal history category. (PSR ¶¶ 78-79.) However, the career offender designation had the effect of changing Mr. Sahakian’s guideline range from 63-78 to 210-262 months. The high-end of the career offender range was then reduced to 240 months, the statutory maximum for the RICO conspiracy conviction. (See PSR at 4.)

The government objected to the PSR's calculation of Mr. Sahakian's non-career-offender guideline range. It acknowledged that, without a special verdict form, it was impossible to know which types of racketeering activity the jury found Mr. Sahakian agreed should be undertaken. However, it argued that the court should calculate Mr.

² For the Court's convenience, Mr. Sahakian's PSR will be lodged with the Court under separate cover.

1 Sahakian's non-career-offender offense level as if the jury had returned a special
2 verdict finding Mr. Sahakian guilty of conspiring to violate RICO by associating with
3 an enterprise engaged in drug trafficking: both the redacted indictment given to the jury
4 as well as the jury instructions charged Mr. Sahakian only with predicate acts involving
5 murder (murder, attempted murder, aiding and abetting murder or attempted murder,
6 conspiracy to commit murder) and drug trafficking, and drug trafficking resulted in a
7 lower non-career-offender guideline range. Therefore, under the rule of lenity, the
8 government said that the court could assume (for purposes of setting the non-career-
9 offender guideline range) that the jury had unanimously agreed drug trafficking was
10 one of the predicate types of racketeering activity involved in the conspiracy.

11 (Government's Response to Defendant's Sentencing Memorandum at 3 & n.1, CR
12 6755.)

13 The government also argued that the jury necessarily must have convicted Mr.
14 Sahakian either of racketeering activity involving murder, attempted murder, aiding and
15 abetting murder or attempted murder, or conspiracy to commit murder, or drug
16 trafficking, or any combination of the two, and as such, Mr. Sahakian's RICO
17 conspiracy conviction was, without a doubt, a predicate career offender offense: either
18 it was a crime of violence for involving a violation of any of the state murder statutes at
19 issue or it was a controlled substance offense for involving drug trafficking, or both.

20 (Government's Objections to Presentence Report, at 3, CR 6717.)

21 Mr. Sahakian objected to both of the government's arguments, contending that it
22 was possible the jury had found him guilty of RICO conspiracy based on the
23 racketeering activity of gambling and passing notes to collect gambling debt. He
24 argued that, applying principles related to the rule of lenity, the court must therefore
25 find his non-career-offender offense level to be 19 and it must find that he was not a

26

27

28

1 career offender because gambling is not a crime of violence.³ Mr. Sahakian also
2 argued that RICO conspiracy was not a crime of violence because it did not satisfy the
3 force clause. (Mr. Sahakian's Objections to PSR, at 4-5, CR 6724; *see also* Mr.
4 Sahakian's Sentencing Memo at 7-8, CR 6750.)

5 At the sentencing hearing, the district court agreed with the government's
6 position that Mr. Sahakian's non-career-offender base offense level should be 30; based
7 on the fact that conspiracy to distribute drugs was the least serious predicate act of
8 which the jury may have convicted Mr. Sahakian. (Ex. F, Transcript of Sentencing, at
9.) The court added a two-level enhancement for obstruction of justice, bringing Mr.
10 Sahakian's non-career-offender total offense level to 32.⁴ The court also agreed with
11 the government that Mr. Sahakian's RICO conspiracy conviction was a qualifying
12 career offender offense, either a controlled substance offense or a crime of violence,
13 because the jury was instructed that it had "to agree unanimously regarding the type of
14 predicate acts of murder, attempted murder, or drug trafficking that the defendant
15 agreed would be committed. And only murder and drug trafficking were predicate acts
16 that were alleged in Count 2." (Ex. F, at 15.) The court sentenced Mr. Sahakian to 240
17 months in prison. (Ex. E.)

18 **B. Appeal**

19 Mr. Sahakian appealed his conviction and sentence. On August 9, 2011, the
20 Ninth Circuit affirmed, in an unpublished memorandum disposition. *United States v.*
21

22 ³ Mr. Sahakian based this argument on the fact that the RICO conspiracy statute
23 covered acts such as collection of unlawful debt, the jury heard evidence regarding
24 gambling and collection of debts, and the jury had deadlocked on the substantive RICO
and Violent Crimes in Aid of Racketeering ("VICAR") counts, indicating that it had
not found Mr. Sahakian had committed any of the drug trafficking or acts involving
murder. (CR 6724 at 5.)

25 ⁴ The court's finding that Mr. Sahakian was a career offender stands as an
26 apparent barrier to him being resentenced under the Sentencing Commission's
27 retroactive change to the drug guidelines, which would lower his offense level to 30,
and his guideline range to 168-210 months. To the extent that the government argues
28 that Mr. Sahakian was not sentenced to a career offender sentence, it must admit that
Mr. Sahakian qualifies for that reduction.

1 *Sahakian*, 446 F. App'x 861 (9th Cir. 2011). The Ninth Circuit characterized the
2 district court as having determined that Mr. Sahakian's RICO conspiracy conviction
3 was a qualifying career offender predicate based on drug distribution, which was the
4 least serious offense on which the verdict could have been based. Specifically, this
5 aspect of the court's decision reads, in full:

6 Nor did the district court err in determining the career offender
7 enhancement based on drug distribution rather than, as Sahakian suggests,
8 gambling evidence that was also adduced at trial. The court properly
9 looked to the indictment and instructions on Count 2, the only count of
10 conviction. *See United States v. Piccolo*, 441 F.3d 1084, 1087 (9th
11 Cir.2006) (applying the categorical approach to determine whether an
12 offense is a "crime of violence" or for a "controlled substance"); *Taylor v.*
13 *United States*, 495 U.S. 575, 602, 110 S.Ct. 2143, 109 L.Ed.2d 607 (1990)
14 (permitting courts to look at the indictment and instructions under the
15 modified categorical approach). The indictment and instructions specified
16 the types of racketeering activity in which Sahakian engaged as "multiple
17 acts involving murder" and "distribution of controlled substances." Count
18 2 does not charge gambling. While it was not necessary for the jury to
19 agree on which particular acts were committed, the jury instructions
20 required the jury to agree on which type of racketeering activity Sahakian
21 agreed would be committed (for example, at least two acts of murder,
22 attempted murder, aiding and abetting murder or attempted murder,
23 conspiracy to commit murder, or drug trafficking, or any combination).
24 Thus when the court opted to sentence based on drug distribution, it chose
25 the lesser offense of the two upon which the verdict was necessarily based.
26 *Sahakian*, 446 F. App'x at 862.

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C. Section 2255 Motion

On July 23, 2012, Mr. Sahakian filed a Section 2255 motion in the Central District of California. (Section 2255 Motion, CR 6968.) Among the claims he made in that motion were two claims related to his career offender status. First, Mr. Sahakian argued that the court had erred in finding he was a career offender because, due to the lack of special verdict, the jury may have based its verdict on gambling or passing notes. (Section 2255 Motion, at 3.) Second, Mr. Sahakian argued that the evidence of drug trafficking presented at trial was barred by the statute of limitations for RICO conspiracy, such that it could not have formed the basis for the court's career offender finding. (Section 2255 Motion, at 8.) On August 23, 2013, the district court denied Mr. Sahakian's motion, ruling that his two career offender claims were procedurally barred because they had been raised and rejected on appeal. (Order Denying Section 2255 Motion at 4, CR 7022.)

III. ARGUMENT

Under 28 U.S.C. § 2255(a), a defendant is entitled to a resentencing when his original sentence was imposed “in violation of the Constitution or laws of the United States,” or is “in excess of the maximum authorized by law.” Mr. Sahkain is entitled to relief on all these grounds because under *Johnson v. United States*, 135 S. Ct. 2251 (2015), he is now serving an illegal and unconstitutional career offender sentence.

A. Mr. Sahakian Is Not a Career Offender Because California Robbery Is Not a Crime of Violence under *Johnson*.

Section 4B1.1 of the Sentencing Guidelines provides for enhanced guidelines ranges where (1) the defendant is 18 years or older at the time of the instant offense, (2) the instant offense is a felony “crime of violence” or “controlled substance offense,” and (3) the defendant has at least two prior felony convictions of either a “crime of violence” or a “controlled substance offense.” See U.S.S.G. § 4B1.1(a). As set out in the career offender guideline, the term “crime of violence” is defined as:

1 [A]ny offense under federal or state law, punishable by imprisonment for a term
2 exceeding one year, that—

3 (1) has as an element the use, attempted use, or threatened
4 use of physical force against the person of another, or
5 (2) is burglary of a dwelling, arson, or extortion, involves use of
6 explosives, or otherwise involves conduct that presents a serious
7 potential risk of physical injury to another.

8 U.S.S.G. § 4B1.2(a). As used in this brief, subsection (1) is called the “force clause”;
9 subsection (2)’s list of offenses is called the “enumerated offenses clause,” and the
10 remainder of subsection (2) is called the “residual clause.”

11 As noted, Mr. Sahakian was deemed to be a career offender because he had two
12 California robbery convictions—a 1979 two-count robbery conviction from Fresno and
13 a 1980 one-count conviction from Santa Clara. (PSR ¶¶ 38, 60-61.).

14 None of these robberies can serve as a predicate crime of violence following
15 *Johnson*.

16 **1. After *Johnson*, Cases Holding that Penal Code 211 Is a Crime of
17 Violence Under the Residual Clause Are Necessarily Overruled.**

18 California Penal Code Section 211, robbery, prohibits “the felonious taking of
19 personal property in the possession of another, from his person or immediate presence,
20 and against his will, accomplished by means of force or fear.” Cal. Penal Code § 211.
21 Previous Ninth Circuit precedent had held that California robbery was a violent crime
22 under the residual clause. *See United States v. Prince*, 772 F.3d 1173, 1176 (9th Cir.
23 2014) (finding that Section 211 is a violent felony under the residual clause of the
24 Armed Career Criminal Act, because it “certainly” is the kind of crime that presents a
25 serious potential risk of physical injury to another);⁵ *see also United States v.*

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28 ⁵ *United States v. Terrell*, 593 F.3d 1084, 1087 n.1 (9th Cir. 2010) (internal
citations omitted) (stating that the ACCA’s “violent felony” definition is “nearly

1 *McDougherty*, 920 F.2d 569, 574 & n.3 (9th Cir. 1990) (“Clearly then, robbery as
2 defined in California falls under 18 U.S.C. 16(b) as a felony that ‘by its nature, involves
3 a substantial risk’ that physical force may be used”; interpreting an earlier version of
4 the career-offender residual clause, but stating that the “result . . . would be no
5 different” under the present version of the guideline).

6 In *Johnson*, the Supreme Court declared the residual clause of the Armed Career
7 Criminal Act (ACCA) to be “unconstitutionally vague” because the “indeterminacy of
8 the wide-ranging inquiry required by the residual clause both denies fair notice to
9 defendants and invites arbitrary enforcement by judges.” *Johnson*, 135 S. Ct. at 2557.
10 Thus, the Supreme Court concluded, “[i]ncreasing a defendant’s sentence under the
11 clause denies due process of law.” *Id.* The Supreme Court held the residual clause
12 “vague in all its applications,” *id.* at 2561, and overruled its contrary decisions in *James*
13 *v. United States*, 550 U.S. 192 (2007), and *Sykes v. United States*, 131 S. Ct. 2267
14 (*Johnson*, 135 S. Ct. at 2562-63).

15 The holding in *Johnson* invalidating the residual clause of the ACCA applies
16 equally to the career offender residual clause. Section 4B1.2(a)(2)’s residual clause
17 tracks the ACCA’s residual clause verbatim. *Compare U.S.S.G. § 4B1.2(a)(2)* (“or
18 otherwise involves conduct that presents a serious potential risk of physical injury to
19 another”); *with 18 U.S.C. § 924(e)(2)(B)(ii)* (“or otherwise involves conduct that
20 presents a serious potential risk of physical injury to another”). Accordingly, the Ninth
21 Circuit interprets the clauses identically and applies ACCA residual clause precedent in
22 career offender cases. *See, e.g., United States v. Terrell*, 593 F.3d 1084, 1087 n.1 (9th
23 Cir. 2010) (internal citations omitted) (stating that the ACCA’s “violent felony”
24 definition is “nearly identical” to Section 4B1.2 and that the decision’s ACCA analysis
25 “applies equally to § 4B1.2”); *United States v. Crews*, 621 F.3d 849, 852 n.4 (9th Cir.
26

27 identical” to Section 4B1.2 and that the decision’s ACCA analysis “applies equally to §
28 4B1.2”).

1 2010) (“In the past we have made no distinction between the terms ‘violent felony’ and
2 ‘crime of violence’ for purposes of interpreting the residual clause . . .”). *Johnson*’s
3 discussion of the legal uncertainty and infirmity inherent in an ACCA residual-clause
4 analysis applies with equal force to Section 4B1.2(a)(2), as the government itself has
5 conceded. *United States v. Benavides*, 617 Fed. App’x 790 (9th Cir. 2015) (vacating
6 and remanding for resentencing in light of government’s concession that *Johnson*
7 applies to the similarly worded residual clause in the guidelines).

8 Because *Johnson*’s holding applies equally to career offender cases, *Johnson*
9 fatally undermines Ninth Circuit precedent holding that Penal Code Section 211 is a
10 crime of violence under the residual clause. The sentence in this case, implicitly
11 premised on the residual clause of the career-offender guideline, was therefore illegal
12 and was imposed in violation of the Constitution.

13 **2. Penal Code 211 Is Not A Crime of Violence Under the Force or
14 Enumerated Offenses Clauses.**

15 The career offender designation in Mr. Sahakian’s case cannot be salvaged under
16 any other clause of the crime of violence definition. First, Mr. Sahakian’s robbery
17 convictions do not qualify under the force clause, as held in *United States v. Dixon*, 805
18 F.3d 1193 (9th Cir. 2015). In *Dixon*, the Ninth Circuit determined that Penal Code
19 Section 211 was not an ACCA “violent felony” because a violation of the statute does
20 not require “the use, attempted use, or threatened use of physical force against the
21 person of another.” *Dixon*, 805 F.3d at 1197. Use of force under the force clause must
22 be intentional, not just reckless or negligent. *Id.* But under California case law, one can
23 violate Penal Code 211 by *accidentally* using force. *Id.* Because Section 211 does not
24 require the intentional use of force, it cannot serve as a “violent felony” predicate for
25 ACCA purposes. *Id.* at 1198. And, for the same reason, a conviction under that statute
26 cannot qualify as a crime of violence under the force clause of the career offender
27 guideline. See *Terrell*, 593 F.3d at 1087 n.1 (applying the ACCA’s “violent felony”
28 analysis to the “nearly identical” crime of violence analysis in § 4B1.2).

1 Furthermore, a conviction under Section 211 does not qualify as a crime of
2 violence under the enumerated offenses clause in the career offender guideline,
3 U.S.S.G. § 4B1.2, because those enumerated offenses include only burglary of a
4 dwelling, arson, extortion, or offenses involving the use of explosives. *See* U.S.S.G. §
5 4B1.2(a)(2). As the Ninth Circuit held in *Dixon*, while “many” violations of Penal Code
6 211 may constitute generic extortion under the current definition, not all will. *See*
7 *Dixon*, 805 F.3d at 1196.⁶

8 Because California robbery is not a crime of violence under the force clause or
9 the enumerated offenses clause, and because the residual clause has been effectively
10 eliminated, Mr. Sahakian is no longer a career offender.

11 **3. The Inclusion of “Robbery” Among the Offenses Enumerated in**
12 **the Commentary to the Guideline Does Not Serve to Make Mr.**
13 **Sahakian a Career Offender**

14 The application notes contained in the commentary to Section 4B1.2 include a
15 separate list of offenses that the application notes state qualify as crimes of violence.
16 Among those offenses is “robbery.” See U.S.S.G. § 4B1.2 cmt. n.1. Prior to *Johnson*,
17 the inclusion of robbery on the list of commentary offenses may have provided a
18 potential alternative basis to hold that Section 211 was a crime of violence, under the
19 reasoning in *United States v. Becerril-Lopez*, 541 F.3d 881, 891 (9th Cir. 2008)
20 (holding that all conduct prohibited by Penal Code 211 was subsumed under the
21 definitions of generic robbery or generic extortion). That alternate basis no longer
22 exists; with the excision of the residual clause from the career offender provision, the
23 offenses listed only in the commentary to the guideline are no longer of any effect.

24 _____
25 ⁶ Mr. Sahakian does not concede that the current generic definition of extortion is
26 correct. The Sentencing Commission has offered a far narrower generic definition of
27 extortion, which will, unless rejected by Congress, become law. But this Court need not
28 decide whether the generic definition proffered in *Dixon* remains good law, because
Mr. Sahakian is not a career offender even under the broader definition currently in
existence, as was held in *Dixon*.

1 The Sentencing Reform Act of 1984 created the Sentencing Commission and
2 authorized it to create “guidelines . . . for use of a sentencing court in determining the
3 sentence to be imposed in a criminal case.” 28 U.S.C. § 994(a)(1). Those guidelines are
4 submitted to Congress in advance, *id.* § 994(p), making the Sentencing Commission
5 “fully accountable to Congress.” *See Mistretta v. United States*, 488 U.S. 361, 393-94
6 (1989) (upholding the Sentencing Commission against a separation of powers challenge
7 on this ground).

8 Commentary, on the other hand, does not receive the same treatment as the
9 guidelines. The Sentencing Reform Act does not explicitly authorize the creation of
10 commentary. 28 U.S.C. § 994(a) (authorizing “guidelines” and “policy statements”);
11 *see also Stinson v. United States*, 508 U.S. 36, 41 (1993). Nor does the Sentencing
12 Reform Act require that commentary be submitted to Congress for approval. *See* 28
13 U.S.C. § 994(p) (requiring only that amendments to guidelines be submitted to
14 Congress); *Stinson*, 508 U.S. at 46 (commentary “is not reviewed by Congress”). And
15 the Sentencing Commission itself has relegated commentary to a secondary,
16 interpretative role. *See* U.S.S.G. § 1B1.7 (explaining that the purpose of the
17 commentary is to “interpret [a] guideline or explain how it is to be applied”); *United*
18 *States v. Anderson*, 942 F.2d 606, 611 (9th Cir. 1991), *abrogated on other grounds by*
19 *Stinson v. United States*, 508 U.S. 36 (1993) (noting the Sentencing Commission’s
20 belief that commentary “is an aid to correct interpretation of the guidelines, not a
21 guideline itself or on a par with the guidelines themselves”). Where commentary assists
22 and amplifies the text of the guideline—and where the text of the guideline “will bear
23 the construction” the commentary offers—the commentary’s interpretation of the
24 guideline is binding. *Stinson*, 508 U.S. at 46. But where commentary runs afoul of the
25 Constitution or a federal statute or where it is “plainly erroneous or inconsistent” with
26 the guideline it interprets, it is the text of the guideline, not the commentary, that must
27 control. *Id.* at 45-47; *United States v. Landa*, 642 F.3d 833, 836 (9th Cir. 2011) (stating
28 if there is a potential conflict between the text and the commentary, the text controls).

1 Because commentary is solely an interpretative aid, it “does not have
2 freestanding definitional power” and only has force insofar as it interprets or explains a
3 guideline’s text. *United States v. Leshen*, 453 Fed. App’x 408, 413-15 (4th Cir. 2011)
4 (unpublished) (finding that prior state sex offenses did not qualify as crimes of
5 violence, despite government argument that offenses fell within the commentary);
6 *accord United States v. Shell*, 789 F.3d 335, 340-41 (4th Cir. 2015) (“[The government
7 skips past the text of § 4B1.2 to focus on its commentary,” but “it is the text, of course,
8 that takes precedence.”) It follows that, if a portion of a guideline is excised, the
9 commentary that interpreted that portion of the guideline must go as well. Vestigial
10 commentary without a textual hook must be deemed “inconsistent” with the text under
11 *Stinson*, because its only “functional purpose” was to “assist in the interpretation and
12 application” of a rule that no longer exists. *Stinson*, 508 U.S. at 45.

13 The only question that remains, then, is whether the term “robbery” in the
14 commentary interpreted the residual clause or whether it interpreted some portion of the
15 definition that remains intact. As a general matter, the offenses enumerated in the
16 commentary could only have been interpreting the residual clause; time and again, the
17 Ninth Circuit has held that the state offenses most closely related to those commentary
18 offenses do not require the use of force. *E.g., Quijada-Aguilar v. Lynch*, 799 F.3d 1303,
19 1306-07 (9th Cir. 2015) (California voluntary manslaughter does not have an element
20 of the use of force); *Delgado-Hernandez v. Holder*, 697 F.3d 1125, 1127 (9th 2012)
21 (California kidnapping does not require an element of force); *United States v. Williams*,
22 110 F.3d 50, 52 (9th Cir. 1997) (Oregon kidnapping does not require an element of use
23 of force); *see also James v. United States*, 550 U.S. 192, 206 (2007) (holding that
24 attempt was appropriately included in the commentary enumerated offenses, “based on
25 the Commission’s review of empirical sentencing data [which] presumably reflects an
26 assessment that attempt crimes often pose a similar risk of injury as completed
27 offenses”). It cannot be said, then, that the commentary offenses are there to “assist in
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1 the interpretation of' the elements clause—the inclusion of those offenses is quite
2 inconsistent with the text of the elements clause.

3 Of all of the offenses listed in the commentary, robbery has perhaps the strongest
4 tie to the residual clause. The Ninth Circuit's generic definition of robbery is tied to the
5 risk of harm to the person, not to any element of force. *See Becerril-Lopez*, 541 F.3d at
6 891 (defining generic robbery as "aggravated larceny, containing at least the elements
7 of misappropriation of property under circumstances *involving immediate danger to the*
8 *person*") (emphasis added); *see also Leshen*, 453 Fed. App'x. at 415 (noting that the
9 generic term "robbery" in the commentary interpreted the residual clause of the career
10 offender guideline). Indeed, Ninth Circuit precedents have generally tied state robbery
11 statutes to the residual clause of various crime-of-violence definitions. *United States v.*
12 *Prince*, 772 F.3d 1173, 1176 (9th Cir. 2014) (finding that California second degree
13 robbery is a violent felony under the residual clause of the Armed Career Criminal Act,
14 because it "certainly" is the kind of crime that presents a serious potential risk of
15 physical injury to another); *United States v. Chandler*, 743 F.3d 648, 652-55 (9th Cir.
16 2014) (Nevada conspiracy to commit robbery is a violent felony under the residual
17 clause), remanded pursuant to *Johnson*, 743 F.3d 648 (9th Cir. 2015); *see also United*
18 *States v. McDougherty*, 920 F.2d 569, 574 & n.3 (9th Cir. 1990) ("Clearly then,
19 robbery as defined in California falls under 18 U.S.C. 16(b) as a felony that 'by its
20 nature, involves a substantial risk' that physical force may be used"; interpreting an
21 earlier version of the career-offender residual clause, but stating that the "result . . .
22 would be no different" under the present version of the guideline).

23 On the flip side, it is equally clear that the majority of Ninth Circuit state robbery
24 statutes are not crimes of violence under the force clause. *See Dixon*, 805 F.3d at 1197
25 (California robbery does not satisfy the force clause); *United States v. Alvarado-*
26 *Pineda*, 774 F.3d 1198 (9th Cir. 2014) (suggesting, without deciding, that Washington
27 robbery might not be a crime of violence under the similarly worded force clause of 18
28 U.S.C. § 16(a), because the statute required "any force or threat, no matter how

1 slight"); *United States v. Dunlap*, ___ F. Supp. 3d ___, 2016 WL 591757, at *4-6 (D.
2 Or. 2016) (Oregon robbery is not a crime of violence under the force clause).

3 Against this background, it is clear that the commentary's reference to robbery
4 could only have interpreted the residual clause, i.e., as an example of a type of crime
5 that entails "a serious potential risk of physical injury to another." With the residual
6 clause excised from the guideline, the commentary no longer serves to interpret or
7 amplify any provision of the remaining text, but, instead, is a contrary and plainly
8 erroneous interpretation of what remains. Once the residual clause is gone, the
9 commentary offenses—and especially robbery—must go as well.

10 The First Circuit has already reached this conclusion post-*Johnson*, holding that
11 the list of enumerated offenses contained in the guidelines commentary was
12 interpreting only the residual clause, and that post-*Johnson*, such commentary is no
13 longer of any effect. *See United States v. Soto-Rivera*, 811 F.3d 53, 60 (1st Cir. 2016).
14 As the Court stated, "once shorn of the residual clause § 4B1.2(a) sets forth a limited
15 universe of specific offenses that qualify as a 'crime of violence.' There is simply no
16 mechanism or textual hook in the Guideline that allows us to import offenses not
17 specifically listed therein into 4B1.2(a)'s definition of 'crime of violence.'" *See id.* This
18 holding is in line with the interpretation many Circuits had given to the career-offender
19 commentary even before *Johnson*. *See Shell*, 789 F.3d at 345 (finding that a state
20 statute that did not meet the requirements of the *text* of § 4B1.2 could not be saved on
21 the grounds that it might fall under one of the commentary's list of offenses, noting that
22 the commentary serves "only to amplify that definition, and any inconsistency between
23 the two [must be] resolved in favor of the text") (citing *Stinson*, 508 U.S. at 43); *United*
24 *States v. Armijo*, 651 F.3d 1226, 1234-37 (10th Cir. 2011) (rejecting the government's
25 argument that Colorado manslaughter qualifies as a crime of violence simply because it
26 is listed in the commentary and need not qualify under the definitions set out in the text;
27 "[t]o read application note 1 as encompassing non-intentional crimes would render it
28 utterly inconsistent with the language of § 4B1.2(a)"); *see also United States v. Serna*,

1 309 F.3d 859, 862 & n.6 (5th Cir. 2002) (possession of a sawed-off shotgun, while
2 listed in the commentary, must satisfy one of the definitions in the text). This Court
3 should do so as well.

4 California robbery is not a crime of violence under any provision of the text of
5 Section 4B1.2, and commentary cannot be used to expand the definition of crime of
6 violence beyond what the text will bear. As such, it cannot serve as a basis to hold that
7 Mr. Sahakian's 1979 and 1980 robbery convictions are crimes of violence.

8 **B. Mr. Sahakian Also Is Not a Career Offender because his Prior
9 Conviction for California Voluntary Manslaughter Is Not a Crime of
10 Violence following *Johnson*.**

11 If the Court agrees that Mr. Sahakian's convictions for second-degree robbery
12 are not crimes of violence, then it should end the analysis there: without those
13 convictions, Mr. Sahakian does not have the requisite prior offenses to be deemed a
14 career offender. Moreover, it would appear that Mr. Sahakian's voluntary manslaughter
15 conviction is irrelevant to the analysis; if robbery is crime of violence, then Mr.
16 Sahakian has two prior convictions even without the manslaughter conviction, and if
17 robbery is not a crime of violence, the manslaughter conviction is not sufficient. Out of
18 an abundance of caution, Mr. Sahakian preserves that his 1979 conviction for voluntary
19 manslaughter, also is not a crime of violence.

20 **1. Following *Johnson*, Cases Holding that Section 192(a) Is a Crime
21 of Violence under the Residual Clause Are Necessarily Overruled.**

22 Section 192(a) provides that voluntary manslaughter "is the unlawful killing of a
23 human being without malice[.] . . . upon a sudden quarrel or heat of passion."⁷ Cal.
24 Penal Code § 192(a). Prior to *Johnson*, courts routinely held that convictions for
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26 ⁷ Note that the PSR lists this charge only as "Voluntary Manslaughter with Use
27 of a Firearm." (PSR ¶ 57.) There is no separate crime in California labeled as such.
There are only three types of manslaughter, voluntary, involuntary, and vehicular. See
28 Cal. Penal Code § 192.

1 California and federal manslaughter crimes were crimes of violence because the
2 statutes at issue satisfied the applicable residual clause.⁸ These cases explicitly
3 concluded that manslaughter did not satisfy the force clause.

4 In *United States v. Springfield*, 829 F.2d 860, 862 (9th Cir. 1987), for example,
5 the Ninth Circuit considered a defendant's challenge to his Section 924(c) conviction
6 on the basis that his conviction for federal involuntary manslaughter under 18 U.S.C.
7 Section 1112 did not qualify as a crime of violence. Section 1112, like Section 192(a)
8 prohibits "the unlawful killing of a human being without malice." 18 U.S.C. § 1112.
9 The *Springfield* court held that Springfield's conviction did not satisfy Section 924(c)'s
10 almost identical force clause⁹ because "[t]he use, attempted use, or threatened use of
11 physical force' is not an element in the crime of involuntary manslaughter." *Id.*
12 However, it concluded that Springfield's manslaughter conviction *did* satisfy Section
13 924(c)'s very similar residual clause because "involuntary manslaughter does, in the
14 sense intended in the statute, carry with it the 'risk' of physical force," as the crime,
15 "'by its nature' involves the death of another person." *Id.*

16 Likewise, in *Park v. I.N.S.*, 252 F.3d 1018, 1021-22 (9th Cir. 2001), the court
17 held that California involuntary manslaughter, Section 192(b), is a crime of violence
18 under the very similar residual clause of 18 U.S.C. Section 16(b). The *Park* court
19 reasoned that because of the close similarities between both the applicable
20 manslaughter statutes and the applicable residual clauses, *Springfield* was controlling

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23 ⁸ It is appropriate to draw from these cases when assessing whether Section
24 192(a) is a crime of violence. As the Ninth Circuit has recognized, California's
25 involuntary manslaughter statute—Section 192(b)—is "nearly identical" to the federal
manslaughter statute—18 U.S.C. Section 1112, *Park v. I.N.S.*, 252 F.3d 1018, 1021-22
(9th Cir. 2001), and at least for purposes of the crime of violence analysis, Section
192(a) and Section 192(b) are "materially identical in all relevant respects," *Purohit v.
Holder*, 441 F. App'x 458, 460 (9th Cir. 2011) (unpub. disposition).

26 ⁹ The force clause of Section 924(c) differs from the force clause of the career
27 offender guideline only in that Section 924(c) includes force used against property in
addition to force used against the person. Compare 18 U.S.C. § 924(c)(3)(A), with
U.S.S.G. § 4B1.2(a)(1).

1 and compelled the conclusion that involuntary manslaughter under Section 192(b) does
2 not satisfy the force clause, but does satisfy the residual clause. *Park*, 252 F.3d at
3 1021-22 & n. 4; *see also United States v. Payton*, 28 F.3d 17, 19 (4th Cir. 1994),
4 *overruling recognized by United States v. Peterson*, 629 F.3d 432 (4th Cir. 2011)
5 (relying on *Springfield* to conclude that defendant's prior conviction for involuntary
6 manslaughter was a crime of violence under the residual clause of the career offender
7 guideline).

8 Under these precedents, prior to *Johnson* a defendant had little motivation to
9 challenge the conclusion that his prior California conviction for voluntary manslaughter
10 was a crime of violence under the career offender guideline. For the reasons stated
11 *supra*, Section III.A.1, however, *Johnson* has fatally undermined the holding of these
12 courts by eliminating the residual clause. Therefore, following *Johnson*, voluntary
13 manslaughter is no longer a career offender predicate crime of violence.

14 **2. Voluntary Manslaughter Is Not a Crime of Violence under the
15 Force or Enumerated Offenses Clauses**

16 The career offender designation in Mr. Sahakian's case cannot be salvaged under
17 any other clause of the crime of violence definition. First, a conviction for voluntary
18 manslaughter does not qualify as a crime of violence under the enumerated offenses
19 clause because those enumerated offenses include only "burglary of a dwelling, arson,
20 or extortion" or crimes "involv[ing] [the] use of explosives." U.S.S.G. § 4B1.2(a)(2).
21 Manslaughter is not included in this list.

22 Second, as noted, the Ninth Circuit held in *Springfield* and recently confirmed in
23 *Quijada-Aguilar v. Lynch*, 799 F.3d 1303, 1306-07 (9th Cir. 2015), that manslaughter
24 categorically is not a crime of violence under the almost-identical force clauses in
25 Section 924(c) and Section 16(a),¹⁰ respectively. As the *Quijada-Aguilar* court

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¹⁰ Like the force clause of Section 924(c), the force clause of Section 16 differs
28 from the force clause of the career offender guideline only in that Section 16 includes

recognized, a defendant can be convicted of Section 192(a) for merely reckless conduct and the statute therefore penalizes a broader range of conduct than the conduct encompassed by the generic definition of “use of force” in the force clause. 799 F.3d at 1306-07; *See also Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121, 1132 (9th Cir. 2006) (en banc) (“[T]o constitute a federal crime of violence an offense must involve the intentional use of force against the person or property of another.” (citing *Leocal v. Ashcroft*, 543 U.S. 1, 9-10 (2004)); *Purohit v. Holder*, 441 F. App’x 458, 460 (9th Cir. 2011) (unpub. disposition) (“California Penal Code § 192(a) is not categorically a crime of violence because it can be committed through the reckless use of force.”). That holding applies equally to the materially indistinguishable force clause of the career offender statute. Accordingly, voluntary manslaughter is not a crime of violence under either of the remaining clauses left in the career offender guideline following *Johnson*.

3. The Inclusion of Manslaughter Among the Offenses Enumerated in the Commentary to the Guideline Does not Serve to Make Mr. Sahakian a Career Offender.

The application notes contained in the commentary to section 4B1.2 include “manslaughter.” *See U.S.S.G. § 4B1.2 cmt. n.1.* Even if Section 192(a) matched the generic, federal definition of voluntary manslaughter,¹¹ with the excision of the residual clause from the career offender provision, the offenses listed only in the commentary to the guideline are no longer of any effect, because they only possibly interpreted the residual clause.

force used against property in addition to force used against the person. *Compare* 18 U.S.C. § 16(a) with U.S.S.G. § 4B1.2(a)(1).

¹¹ As far as counsel is aware, the Ninth Circuit has never articulated a generic, federal definition of voluntary manslaughter applicable to the career offender statute. And, if it did, under *Johnson I*, *Leocal*, and *Fernandez-Ruiz*, that standard likely would require both the intentional use of force and the use of violent force, neither of which are required by Section 192(a).

1 It is clear that the commentary's enumeration of manslaughter was meant to
2 interpret the residual clause: as noted, the Ninth Circuit has consistently held that
3 manslaughter does not have as an element the use, attempted use, or threatened use of
4 force. *Quijada-Aguilar*, 799 F.3d at 1306-07 (Section 192(a) categorically does not
5 satisfy the almost-identical force clause of 18 U.S.C. Section 16(a) because Section
6 192(a) does not "require proof of an *intentional* use of force[.]") Instead, "a person may
7 be convicted of voluntary manslaughter under CPC § 192(a) for merely reckless
8 conduct." (citing *People v. Lasko*, 23 Cal. 4th 101 (2000)); *Park*, 252 F.3d at 1021-22
9 & n.4 (Section 192(b) does not have as an element the use, attempted use, or threatened
10 use of force); *Springfield*, 829 F.2d at 862 (Section 1112 does not have as an element
11 the use, attempted use, or threatened use of force). And, on the other hand, the Ninth
12 Circuit has consistently held that manslaughter falls within the residual clause because,
13 by its nature, it involves the death of a person. See *Springfield*, 829 F.3d at 862; *Park*,
14 252 F.3d at 1021-22.

15 For this reason, and for the reasons discussed *supra*, Section III.A.3., *Johnson*'s
16 invalidation of the residual clause necessarily takes with it the commentary offenses,
17 including manslaughter. Accordingly, following *Johnson*, Mr. Sahakian's prior
18 conviction under California Penal Code § 192(a) is not a crime of violence for career
19 offender purposes.

20 **C. Mr. Sahakian Also Is Not a Career Offender because the Instant
21 Offense, RICO Conspiracy, Is Not a Crime of Violence following
22 *Johnson*.**

23 Because Mr. Sahakian does not have the requisite prior offenses, he is not a
24 career offender and the Court need go no further. However, if the Court were to
25 consider Mr. Sahakian's instant offense, it should conclude that that offense also no
26 longer qualifies as a crime of violence following *Johnson*.

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1 **1. For Purposes of the Career Offender Designation Only, this Court**
2 **Must Assume the Jury found Mr. Sahakian Guilty of RICO**
3 **Conspiracy Based on Two Acts Involving Conspiracy to Commit**
4 **Murder.**

5 Mr. Sahakian's jury was instructed that its verdict
6 must be unanimous as to which type or types of predicate racketeering act
7 the defendant agreed would be committed, for example, at least two acts of
8 murder, attempted murder, aiding and abetting[] murder or attempted
9 murder, conspiracy to commit murder or drug trafficking or any
10 combination thereof.

11 (Ex. B at 58-59.)

12 However, as there was only a general verdict form in his case, it is impossible to
13 tell which two predicate acts the jury agreed upon. This is especially true given that the
14 jury deadlocked on every other count with which Mr. Sahakian was charged. Thus, the
15 jury could have, for example, found that Mr. Sahakian was guilty of a RICO conspiracy
16 involving conspiring to commit murder and aiding and abetting attempted murder. Or,
17 the jury could have found Mr. Sahakian guilty of a RICO conspiracy involving drug
18 trafficking and actual murder. Or the jury could have found Mr. Sahakian guilty of a
19 RICO conspiracy involving two conspiracies to commit murder.

20 Because the type of underlying racketeering activity relates to the sentence to be
21 imposed, it was the government's duty to seek a special verdict on the RICO
22 conspiracy count. *United States v. Garcia*, 37 F.3d 1359, 1370 (9th Cir. 1994). And it
23 was because there was no special verdict that the Ninth Circuit sanctioned what, in its
24 view, the district court had done at sentencing with respect to determining Mr.
25 Sahakian's career offender status; "chose[n] [drug distribution,] the lesser offense of
26 the two upon which the verdict was necessarily based." *Sahakian*, 446 F. App'x at 862.
27 Now that *Johnson* has come out, however, for purposes of the career offender
28 guideline, the lesser offense of the two categories of racketeering activity with which

1 Mr. Sahakian's jury was instructed is the category of acts involving murder, and
2 especially conspiracy to commit murder. This is because a RICO conspiracy
3 conviction based on drug trafficking qualifies as a predicate career offender controlled
4 substance offense while a RICO conspiracy conviction involving murder, and
5 especially conspiracy to commit murder, no longer does post-*Johnson*, for the reasons
6 discussed below. Accordingly, for purposes of this motion, this Court must assume that
7 Mr. Sahakian's jury could have found him guilty of a RICO conspiracy involving two
8 conspiracies to commit murder.

9 **2. Following *Johnson*, RICO Conspiracy Does Not Qualify as a**
10 **Crime of Violence under the Residual Clause because that Clause**
11 **Is Void for Vagueness.**

12 Prior to *Johnson*, the Ninth Circuit had long held that conspiracy crimes were
13 crimes of violence under the residual clause of various crimes of violence definitions so
14 long as the underlying crime was a crime of violence. The reasoning underpinning
15 these decisions was that conspiring to commit an act of violence increases the chance
16 that an act of violence will be committed, and therefore involves a “substantial risk” of
17 injury to another. In *United States v. Mendez*, 992 F.2d 1488 (9th Cir. 1993), *cert.*
18 *denied*, 510 U.S. 896 (1993), for example, the Ninth Circuit concluded that conspiracy
19 to commit Hobbs Act robbery was a crime of violence under the residual clause of
20 Section 924(c) because, “[t]he existence of a criminal grouping increases the chances
21 that the planned crime will be committed beyond that of a mere possibility. . . . Thus,
22 ascribing an ordinary meaning to the words, a conspiracy to commit an act of violence
23 is an act involving a “substantial risk” of violence.” *Id.* at 1491 (quoting *United States*
24 *v. Chimurenga*, 760 F.2d 400, 404 (2d Cir. 1985)). *See also United States v. Chandler*,
25 743 F.3d 648, 652 (9th Cir. 2014), *vacated and remanded* in light of *Johnson*, 619 F.
26 App’x 641 (9th Cir. 2015) (citing *Mendez* and holding that Nevada conspiracy to
27 commit robbery satisfies the residual clause of the ACCA because “a conspiracy
28 ‘increases the chances that the planned crime will be committed’”); *United States v.*

1 *Harper*, 33 F.3d 1143, 1149 n.5 (9th Cir. 1994) (citing *Mendez* and stating “Conspiracy
2 to rob a bank is a crime of violence for purposes of section 924(c)(1)”).

3 Drawing on the reasoning in *Mendez*, the Ninth Circuit held in 1997 that RICO
4 conspiracy was a crime of violence under the residual clause of Section 16(b) for
5 purposes of the Juvenile Delinquency Act¹² so long as the predicate racketeering
6 activity the defendant agreed should be committed was a crime of violence. *United*
7 *States v. Juvenile Male*, 118 F.3d 1344, 1350 (9th Cir. 1997); *see also United States v.*
8 *Scott*, 642 F.3d 791, 801 (9th Cir. 2011) (citing *Juvenile Male* and affirming district
9 court’s conduct in “look[ing] behind the RICO [conspiracy] conviction and
10 consider[ing] the underlying predicate offenses in determining whether [the defendant’s
11 RICO conspiracy] offense qualified as a crime of violence”). Like the *Mendez* court,
12 the *Juvenile Male* court reasoned that ““a conspiracy to commit an act of violence is an
13 act involving a “substantial risk” of violence.”” 118 F.3d at 1350 (quoting *Mendez*, 992
14 F.2d at 1490, and citing *Chimurenga*, 760 F.2d at 404 (2d Cir. 1985), and *United States*
15 *v. Doe*, 49 F.3d 859, 866 (2d Cir. 1995)); *see also Doe*, 49 F.3d at 866 (concluding that
16 RICO conspiracy to commit robbery is a crime of violence because “the nature of the
17 conspiracy’s substantive objective [] provide[s] an indication as to whether the
18 conspiracy creates the substantial risk that physical force against the person or property
19 of another may be used in the offense”). Thus, in *Juvenile Male*, the court concluded
20 that the RICO conspiracy charged against the juvenile was a crime of violence under
21 the residual clause because the predicate activity of Hobbs Act robbery was a crime of
22 violence. *Id.* at 1350.

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27 ¹² “Crime of violence” for purposes of the Juvenile Delinquency Act is defined
28 by 18 U.S.C. § 16. *See United States v. Juvenile Female*, 566 F.3d 943, 947 (9th Cir.
2009).

1 Now that *Johnson* has invalidated the residual clause, however, there is no longer
2 a basis for finding that Mr. Sahakian's RICO conspiracy conviction qualifies as a crime
3 of violence. (*See supra*, Section III.A.1.)

4 **3. RICO Conspiracy Is Not a Crime of Violence under the Force
5 Clause.**

6 Mr. Sahakian's career offender designation cannot be salvaged under the force
7 clause because his conviction for RICO conspiracy does not have "as an element the
8 use, attempted use, or threatened use of physical force against the person or property of
9 another." U.S.S.G. § 4B1.2(a)(1). To determine whether a predicate offense qualifies
10 as a "crime of violence" under the force clause, this Court must employ the categorical
11 approach outlined in *Taylor v. United States*, 495 U.S. 575, 600 (1990). *See United*
12 *States v. Simmons*, 782 F.3d 510, 513 (9th Cir. 2015); *see also Descamps v. United*
13 *States*, 133 S. Ct. 2276, 2283 (2013) (applying categorical approach in an Armed
14 Career Criminal Act (ACCA) case). Under *Taylor*, only the statutory definitions —i.e.,
15 the elements—of the predicate crime are relevant to determine whether the conduct
16 criminalized by the statute, including the most innocent conduct, qualifies as a "crime
17 of violence." 495 U.S. at 599-601.

18 Determination of whether a criminal offense is categorically a crime of violence
19 is done by "assessing whether the 'full range of conduct covered by [the statute] falls
20 within the meaning of that term.'" *United States v. Grajeda*, 581 F.3d 1186, 1189 (9th
21 Cir. 2009) (citation omitted). To do this, courts must look "at the least egregious end of
22 [the. . . statute's] range of conduct." *United States v. Baza-Martinez*, 464 F.3d 1010,
23 1014 (9th Cir. 2006) (quoting *United States v. Lopez-Solis*, 447 F.3d 1201, 1206 (9th
24 Cir. 2006)). In other words, under the categorical approach, a prior offense can only
25 qualify as a "crime of violence" if all of the criminal conduct covered by a statute—
26 "including the most innocent conduct"—matches or is narrower than the "crime of
27 violence" definition. *United States v. Torres-Miguel*, 701 F.3d 165, 167 (4th Cir.
28 2012). If the statute punishes some conduct that would qualify as a crime of violence

1 and some conduct that would not, it does not categorically constitute a crime of
2 violence. *Grajeda*, 581 F.3d at 1189. In a “narrow range of cases,” if the statute is
3 divisible as to a material element, then the court may apply the modified categorical
4 approach by looking beyond the statutory elements to certain documents of conviction
5 to determine whether the defendant’s conviction necessarily involved facts
6 corresponding to the generic federal offense. *Descamps*, 133 S. Ct. at 2283-84.

7 To be a categorical match to the terms of the force clause in the career offender
8 guideline, a state statute must require proof of both intentional conduct and violent
9 force. As to intentional conduct, in *Leocal v. Ashcroft*, 543 U.S. 1, 9-10 (2004), the
10 Supreme Court held that a conviction under a Florida statute prohibiting driving under
11 the influence was not a crime of violence under the almost-identical force clause in 18
12 U.S.C. Section 16(a) because the crime could be committed through mere negligence or
13 even accidental conduct. An en banc panel of the Ninth Circuit then interpreted *Leocal*
14 as requiring that, “to constitute a federal crime of violence an offense must involve the
15 *intentional* use of force against the person or property of another.” *Fernandez-Ruiz v.*
16 *Gonzales*, 466 F.3d 1121, 1132 (9th Cir. 2006) (en banc) (emphasis added); *see also*
17 *United States v. Dixon*, 805 F.3d 1193, 1197 (9th Cir. 2015) (citing *Leocal* and holding
18 that the identically worded force clause in the ACCA requires that “the use of force
19 must be intentional, not just reckless or negligent”); *United States v. Serafin*, 562 F.3d
20 1105, 1108 (9th Cir. 2009) (applying *Leocal*’s gloss on 18 U.S.C. § 16 to the identically
21 worded definition of crime of violence found at 18 U.S.C. § 924(c)(3)); *United States v.*
22 *Acosta*, 470 F.3d 132, 134-35 (2d Cir. 2006) (same).

23 “Physical force” has the meaning given to it by *Leocal* and the Supreme Court’s
24 2010 decision in *Johnson v. United States*, 559 U.S. 133, 140 (2010) (*Johnson I*). In
25 *Leocal*, in addition to interpreting the *mens rea* requirement of Section 16(a), the
26 Supreme Court also held that the phrase “physical force” in that section requires a
27 “violent, active crime[.]” 543 U.S. at 11. The *Johnson I* Court expanded on that
28 definition, holding that the phrase “physical force” in ACCA’s identical force clause

1 defining “violent felony” means “*violent* force—that is, force capable of causing
2 physical pain or injury to another person.” *Johnson I*, 559 U.S. at 140.

3 Mr. Sahakian’s RICO conspiracy conviction is not a crime of violence under the
4 force clause for two reasons. First, RICO conspiracy does not have as an element the
5 use or threatened use of any physical force, let alone the intentional use of violent
6 force.¹³ Second, even if it were appropriate to “look through” the conspiracy charge to
7 the underlying predicate racketeering activity of conspiring to commit murder—using
8 the conspiracy to murder black inmates in violation of California Penal Code Sections
9 182 charged as predicate act number 37 as an example¹⁴—conspiracy to commit
10 murder also does not have as an element the use or threatened use of any physical
11 force.

12 **a. RICO Conspiracy Does Not Have, as an Element, the**
13 **Use or Threatened Use of Physical Force.**

14 In a prosecution for a substantive RICO offense, the government must prove “(1)
15 the conduct (2) of an enterprise [engaged in, or the activities of which affect, interstate
16 or foreign commerce] (3) through a pattern of racketeering activity.” *Salinas v. United*
17 *States*, 522 U.S. 52, 62 (1997). A “pattern of racketeering activity” “requires at least
18 two acts of ‘racketeering activity,’” which, in turn, is defined to include “murder,
19 kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or
20 dealing in a controlled substance or listed chemical . . . , which is chargeable under

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¹³ This is why, even if the court were to assume for purposes of this motion that
24 the jury had convicted Mr. Sahakian of two predicate acts involving murder, aiding and
abetting murder, or attempted murder, Mr. Sahakian’s RICO conspiracy conviction still
would not qualify as a crime of violence under the force clause.

25 ¹⁴ It would not matter which of the victims in which of the various states the
court used for purposes of this analysis because none of the various state conspiracy
statutes require the use, attempted use, or threatened use of violence. They each, like
California, only require an agreement and an overt act which does not have to be
violent. *See Co. Crim. Code § 18-2-201; Ga. Code § 16-4-8; Ill. Crim. Code § 5/8-2(a);*
Kan. Crim. Code § 51-5302(a); Mo. Stat. § 564.016; Penn. Cons. Stat. § 903.

1 State law and punishable by imprisonment for more than one year.” 18 U.S.C. §
2 1961(1)(A), (5).

3 In a RICO conspiracy prosecution, the government must only prove that a
4 defendant “knew about and agreed to facilitate [a] scheme” of racketeering activity.
5 *Salinas*, 522 U.S. at 66. “There is no requirement of some overt act or specific act” in a
6 RICO conspiracy case. *Id.* at 63. (Ex. B, Transcript of Jury Instructions, at 54-55
7 (listing elements of RICO conspiracy count as: “One, first, that the defendant
8 knowingly agreed to conduct or participate directly or indirectly in the conduct of the
9 affairs of the charged enterprise through a racketeering activity; Two, second, that an
10 enterprise would be established as alleged in the indictment; Three, third, that the
11 enterprise or its activities would [a]ffect interstate commerce; and, Fourth, that the
12 defendant would be associate with the enterprise.”).) For this reason, the RICO
13 conspiracy statute “is even more comprehensive than the general conspiracy offense in
14 [18 U.S.C.] § 371.” *Salinas*, 522 U.S. at 66. The government need not even prove that
15 the enterprise ever existed, only that the defendant and others conspired to support an
16 enterprise engaged in a pattern of racketeering activity. *See United States v. Harris*,
17 695 F.3d 1125, 1131 (10th Cir. 2012).

18 The breadth of the RICO conspiracy statute is well illustrated by the court’s
19 instructions to Mr. Sahakian’s jury. To distinguish the RICO conspiracy charge from
20 the substantive RICO charge, the court told the jury:

21 it is not necessary in order to convict the defendant of a charge of
22 conspiracy, that the acts or purposes of the conspiracy, whatever they may
23 be, have been achieved or accomplished. In other words, the ultimate
24 success or failure of the conspiracy is irrelevant. *Rather, the*
25 *conspiratorial agreement to commit a RICO offense is the essential aspect*
26 *of a RICO conspiracy offense[.]*

27 . . .
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1 [Moreover,] the government is not required to prove that the alleged
2 enterprise was actually established, that the defendant was actually
3 associated with the enterprise or that the enterprise or its activities actually
4 affected interstate commerce. Rather, because the agreement to commit
5 [the] RICO offense is the essence of a RICO conspiracy the government
6 need only prove that if the conspiracy offense were to be accomplished as
7 contemplated, the enterprise would be established, that the defendant
8 would be associated with the enterprise and that the enterprise or its
9 activities would affect interstate commerce.

10 (Ex. B at 55-56 (emphasis added).) Indeed, as the government stressed in its
11 closing, “*the thought is the crime.*” (Ex. D, Transcript of Closing Arguments, at
12 93 (emphasis added).)

13 Because the RICO conspiracy statute only requires a showing that the defendant
14 agreed with others to violate the RICO statute, and does not even require the
15 government to demonstrate that the defendant or anyone else involved in the conspiracy
16 committed an overt act in furtherance of the conspiracy *or took any action at all*, the
17 crime does not have as an element the use, attempted use, or threatened use of force, let
18 alone the use, attempted use, or threatened use of violent, physical force. For that
19 reason, it cannot be a crime of violence under the force clause. *Cf. United States v.*
20 *Luong*, Case No. CR 99-00433, 2016 WL 1588495, *2 (E.D. Cal. Apr. 20, 2016)
21 (dismissing Section 924(c) counts post-*Johnson*, reasoning that Hobbs Act conspiracy
22 is not a crime of violence under the force clause because it only requires an agreement
23 between two or more persons, and does not require that the persons actually commit the
24 crime; therefore it does not require the use, attempted use, or threatened use of physical
25 force); *United States v. Edmundson*, __ F. Supp. 3d __, 2015 WL 9582736 (D. Md.
26 Dec. 30, 2015) (same); *Chandler*, 743 F.3d at 648 (implying that Nevada conspiracy to
27 commit robbery does not satisfy the force clause and is not an enumerated offense
28 under the ACCA; holding that it qualified under the residual clause); *United States v.*

White, 571 F.3d 365, 368-69 (4th Cir. 2009) (holding that North Carolina conspiracy statute, which lacks an overt act element, does not satisfy the force clause of the ACCA because it does not have as an element the use, attempted use, or threatened use of force), *abrogated on other grounds by Johnson*, 135 S. Ct. 2551 (2015); *United States v. Gore*, 636 F.3d 728, 731 (5th Cir. 2011) (same, with respect to Texas conspiracy to commit robbery statute).

In other words, regardless of what the underlying racketeering activity *is*, a RICO conspiracy charge does not have, as an element, the use, attempted use, or threatened use of force.

b. **California Conspiracy to Commit Murder Does Not Have, as an Element, the Use or Threatened Use of Physical Force.**

Mr. Sahakian does not believe it is appropriate to “look through” the RICO conspiracy charge to the underlying predicate racketeering activity when determining whether a RICO conspiracy conviction qualifies as a crime of violence under the force clause. As noted, the government need not prove the elements of the crime of conspiracy to commit murder in order to obtain a conviction for RICO conspiracy, and under *Taylor*, only the elements of the predicate crime are relevant to determining whether that crime qualifies as a “crime of violence.” *Taylor*, 495 U.S. at 599-601. Even if such a thing were appropriate, however, Mr. Sahakian’s conspiracy to commit murder, using California Penal Code Section 182 as an example, would still fail to satisfy the force clause because Section 182 also does not have as an element the use, attempted use, or threatened use of force.

In prosecutions for conspiracy to commit murder, California juries are instructed that in order to prove a defendant is guilty, the prosecution must prove (1) the defendant intended to agree and did agree with the other defendants to intentionally and unlawfully kill; (2) at the time of the agreement, the defendant and one or more of the other alleged members of the conspiracy intended that one or more of them would intentionally and unlawfully kill; (3) the defendant or one or more of the other alleged

1 members of the conspiracy committed at least one overt act to accomplish the killing;
2 and (4) the overt act was committed in California. Cal. Jur. Crim. Jury Instr. No. 563
3 (Conspiracy to Commit Murder); *see also People v. Swain*, 12 Cal. 4th 593, 600
4 (1996). (Ex. B, at 51-52 (citing Cal. Penal Code § 182 and setting forth these
5 elements).)

6 None of these elements requires violent force, or any force at all. The only
7 element that even requires any action beyond talking is the overt act requirement.
8 However, in California, overt acts need not be forceful or violent. “[O]vert acts need
9 not be in themselves criminal in nature so long as they are done in pursuance of the
10 conspiracy. Nor is it necessary that the purpose of the conspiracy be fully
11 accomplished.” *People v. Robinson*, 43 Cal.2d 132, 139-40 (1954) (internal citations
12 omitted). (Ex. B, at 51-52 (instructing Mr. Sahakian’s jury the same).) Instead, an
13 overt act is merely “an outward act done in pursuance of the crime and in manifestation
14 of an intent or design, looking toward the accomplishment of the crime.” *People v.*
15 *Zamora*, 18 Cal.3d 538, 549 n.8 (1976) (In Bank). Thus, a defendant in a conspiracy-
16 to-commit-murder case could be convicted of that crime after he or she, or any co-
17 conspirator, took such nonviolent, non-forceful conduct as meeting with other co-
18 conspirators; attempting to recruit more co-conspirators; withdrawing money in order
19 to give it to a co-conspirator; giving money to a co-conspirator; obtaining a weapon,
20 supplies, or getaway vehicle; conducting surveillance; or driving to the place where the
21 co-conspirators plan to commit the murder.

22 For example, in *People v. Russo*, 25 Cal.4th 1124 (2001), the Supreme Court of
23 California affirmed the conspiracy-to-commit-murder conviction of a defendant whose
24 indictment charged the following overt acts, none of which involve the use or
25 threatened use of physical force (let alone violent, physical force) against another:

26 (1) Morris asked Plantz if he knew anyone who would kill David; (2)
27 defendant gave Andrews David's handgun; (3) Andrews and defendant
28 asked Hayes to help them kill David; (4) defendant told Hayes she would

1 pay him whatever he asked if he would help kill David; (5) Andrews gave
2 Hayes \$100 after he and defendant asked him to help kill David; (6)
3 defendant contacted Andrews after David went to sleep the night of the
4 killing; (7) Andrews and Morris went to the Russo house that night; (8)
5 defendant let Andrews and Morris into the house; (9) defendant let
6 Andrews and Morris into the bedroom of her sleeping husband David.

7 *Id.* at 1130.

8 Likewise, in *People v. Hernandez*, 30 Cal.4th 835, 861-62 (2003), *disapproved*
9 *of on other grounds by People v. Riccardi*, 54 Cal.4th 758 (2012), the Supreme Court
10 affirmed the conviction of a defendant charged with the following nonviolent,
11 nonforceful overt acts: “defendant met with Alfredo Padilla and Brenda Prado on the
12 night of January 4-5, 1988, [and] [] at the meeting he agreed to kill Esther Alvarado in
13 exchange for drugs.” *Id.*; *see also People v. Superior Court*, 41 Cal.4th 1, 11 (2007)
14 (“Had Deck struck an agreement with and paid earnest money to a real hired killer, he
15 could have been prosecuted for conspiracy to commit murder.”); *United States v.*
16 *Fernandez*, 388 F.3d 1199, 1225 (9th Cir. 2004) (affirming RICO conspiracy
17 conviction based on predicate act of California conspiracy to commit murder where
18 overt act committed by coconspirator was “follow[ing] Turscak’s wife home on the
19 freeway in order to determine where the Turscaks lived”).

20 While such actions no doubt raise the risk that someone will use force—
21 sufficient to have supported a finding that conspiracy to commit murder was a predicate
22 offense under the residual clause—they do not have, as an element, the use, threatened
23 use, or attempted use of physical force. Because a defendant need not use or attempt to
24 use any force, let alone violent force, in order to be guilty of conspiracy to commit
25 murder, a Section 182 conviction does not qualify as a crime of violence under the
26 force clause.

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1 **4. The Excision of the Residual Clause Takes with It the**
2 **Commentary Offense of Conspiracy, which Only Served to**
3 **Interpret the Residual Clause.**

4 The commentary to the career-offender guideline states that the term crime of
5 violence “include[s] the offenses of aiding and abetting, conspiring, and attempting to
6 commit such offenses.” *See U.S.S.G. § 4B1.2 cmt. n.1.* The government may argue
7 that inclusion of “conspiracy” in the commentary salvages Mr. Sahakian’s career
8 offender designation, on the theory that he conspired to commit a crime of violence
9 under the force clause. This would be wrong for two reasons: First, RICO conspiracy is
10 not generic conspiracy. Generic conspiracy requires an overt act. *United States v.*
11 *Garcia-Santana*, 774 F.3d 528, 535-36 (9th Cir. 2014). A conviction under 18 U.S.C. §
12 1962(d) requires no overt act, however. *Salinas*, 522 U.S. at 63 (“There is no
13 requirement of some overt act or specific act” in a RICO conspiracy case.)

14 And second, now that the residual clause has been excised from the career
15 offender provision by *Johnson*, however, the inchoate offenses listed only in the
16 commentary to the guideline are no longer of any effect because they only possibly
17 interpreted the residual clause. (*See supra*, Section III.A.1. & III.A.3.) Indeed, it is
18 clear that, specifically, the term “conspiracy” in the commentary could only have
19 interpreted the residual clause of the guideline; as discussed above, Section III.C.3., a
20 conspiracy conviction is complete as soon as someone agrees to violate the RICO
21 statute—in the case of RICO conspiracy—or commits an overt act—in the case of
22 California conspiracy to commit murder—and therefore does not require, as an
23 element, that physical force be used, attempted, or threatened. It only increases the risk
24 that such force may be used. And this increased risk of the use of physical force is
25 exactly why the Ninth Circuit had, prior to *Johnson*, consistently held that conspiracy
26 crimes could satisfy the residual clause. *See, e.g., Chandler*, 743 F. 3d at 648; *Juvenile*
27 *Male*, 118 F.3d at 1350; *Mendez*, 992 F.2d at 1490. Because the commentary’s
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1 enumeration of conspiracy could only have interpreted the residual clause, the excision
2 of the residual clause necessarily excised that portion of the guideline as well.

3 RICO conspiracy is not a crime of violence under any provision of the text of
4 Section 4B1.2, and commentary cannot be used to expand the definition of crime of
5 violence beyond what the text will bear. As such, it can no longer serve as an
6 alternative basis to hold that Mr. Sahakian's conviction is a crime of violence. In short,
7 Mr. Sahakian's RICO conspiracy conviction is not a crime of violence for career
8 offender purposes.

9 **IV. CONCLUSION**

10 For the reasons set forth above, Mr. Sahakian's sentence was "imposed in
11 violation of the Constitution or laws of the United States." Mr. Sahakian is entitled to
12 Section 2255 relief and should be resentenced under the non-career-offender guideline.
13

14 Respectfully submitted,

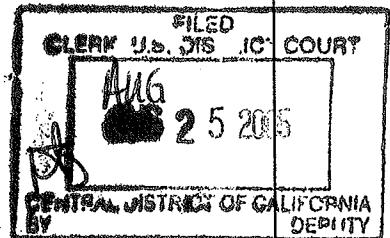
15 HILARY POTASHNER
Federal Public Defender
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DATED: June 18, 2016

By /s/ Brianna Fuller Mircheff
BRIANNA FULLER MIRCHEFF
Deputy Federal Public Defender
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EXHIBIT A

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2005 Grand Jury

UNITED STATES OF AMERICA,)	CR 02-938 (E) <i>GJK</i>
Plaintiff,)	F I R S T S U P E R S E D I C T I O N
v.)	I N D I C T M E N T
BARRY BYRON MILLS, aka "McB,")	[18 U.S.C. § 1962(c): Racketeer Influenced and Corrupt Organizations; 18 U.S.C. § 1962(d): Racketeer Influenced and Corrupt Organizations Conspiracy; 18 U.S.C. § 1959(a)(1): Violent Crimes in Aid of Racketeering; 18 U.S.C. § 1111: Murder; Notice of Special Findings]
TYLER DAVIS BINGHAM, aka "T.D.," aka "The Hulk," aka "T," aka "Bull,")	
JOHN WILLIAM STINSON, aka "Youngster," aka "The Youngest,")	
RICHARD LLOYD TERFLINGER, aka "Bart Simpson,")	
ROBERT LEE GRIFFIN, aka "Blinky," aka "McGrif,")	
RONALD BOYD SLOCUM, aka "Slo," aka "McKool,")	
DAVID ALLEN CHANCE,)	
MICHAEL PATRICK McELHINEY, aka "Big Mac,")	
DAVID MICHAEL SAHAKIAN,)	
CLEO ROY, aka "Elroy," aka "Cow Hampshire,")	
GLENN RICHARD FILKINS, aka "G,")	
STEVE LOREN SCOTT, aka "Scottie,")	
WAYNE BRIDGEWATER,)	
STEVEN WILLIAM HICKLIN,)	
CHRISTOPHER OVERTON GIBSON,)	
MICHAEL BRUCE SHEPHERD, aka "Tank,")	
EDWARD TYLER BURNETT,)	
EDGAR WESLEY HEVLE, aka "Snail,")	

GWJ:sp

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1 MARK ALAN NYQUIST,)
2 aka "Big Mark,")
3 aka "Mark Owen,")
4 JOHN HENRY HARPER,)
5 aka "Turtle,")
6 aka "John Henry,")
7 GLEN ALAN WEST,)
8 aka "Speedy,")
9 GARY JOE LITTRELL,)
10 ELLIOTT SCOTT GRIZZLE,)
11 aka "Scott,")
12 THOMAS LEROY HAMPTON,)
13 aka "Lucifer,")
14 JOHN STANLEY CAMPBELL, JR.,)
15 JESSE ANTONIO VAN METER,)
16 DONALD EDWARD KENNEDY,)
17 RICHARD SCOTT McINTOSH,)
18 CARL EDGAR KNORR, JR.,)
19 JASON LEE SCHWYHART,)
20 HENRY MICHAEL HOUSTON,)
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30 aka "Shorty,")
31 SEAN MATTHEW DARCY,)
32 MARTY LAINE FOAKES,)
33 aka "Marty Donahue,")
34 LEE ANN MARTIN,)
35 BRENDA JO RILEY,)
36 aka "Brenda Grizzle," and)
37 JOSEPH PRINCIPE,)
38 Defendants.)
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1 Youngest," RICHARD LLOYD TERFLINGER, aka "Bart Simpson," ROBERT
2 LEE GRIFFIN, aka "Blinky," aka "McGrif," RONALD BOYD SLOCUM, aka
3 "Slo," aka "McKool," DAVID ALLEN CHANCE, MICHAEL PATRICK
4 McELHINEY, aka "Big Mac," DAVID MICHAEL SAHAKIAN, CLEO ROY, aka
5 "Elroy," aka "Cow Hampshire," GLENN RICHARD FILKINS, aka "G,"
6 STEVE LOREN SCOTT, aka "Scottie," WAYNE BRIDGEWATER, STEVEN
7 WILLIAM HICKLIN, CHRISTOPHER OVERTON GIBSON, MICHAEL BRUCE
8 SHEPHERD, aka "Tank," EDWARD TYLER BURNETT, EDGAR WESLEY HEVLE,
9 aka "Snail," MARK ALAN NYQUIST, aka "Big Mark," aka "Mark Owen,"
10 JOHN HENRY HARPER, aka "Turtle," aka "John Henry," GLEN ALAN
11 WEST, aka "Speedy," GARY JOE LITTRELL, ELLIOTT SCOTT GRIZZLE, aka
12 "Scott," THOMAS LEROY HAMPTON, aka "Lucifer," JOHN STANLEY
13 CAMPBELL, JR., JESSE ANTONIO VAN METER, DONALD EDWARD KENNEDY,
14 RICHARD SCOTT McINTOSH, CARL EDGAR KNORR, JR., JASON LEE
15 SCHWYHART, HENRY MICHAEL HOUSTON, aka "Tweak," MANUEL LARRY
16 JACKSON, aka "Cricket," RAFAEL GONZALEZ-MUNOZ, JR., aka "Cisco,"
17 DEBRA LEE STINSON, aka "The Girl Down The Street," JOANNE LOUISE
18 GUTHRIE, aka "Shorty," SEAN MATTHEW DARCY, MARTY LAINE FOAKES,
19 aka "Marty Donahue," LEE ANN MARTIN, BRENDA JO RILEY, aka "Brenda
20 Grizzle," and JOSEPH PRINCIPE, and others, were members and
21 associates of a criminal organization whose members and
22 associates engaged in, among other things, murder, attempted
23 murder, conspiracy to commit murder, extortion, robbery, and
24 narcotics trafficking. At all relevant times, this organization,
25 which is known as "the Aryan Brotherhood," operated in the
26 Central District of California and elsewhere. The Aryan
27 Brotherhood and the individuals who associate with it for
28 criminal purposes constitute an "enterprise" as defined by Title

1 18, United States Code, Section 1961(4), that is, a group of .
2 individuals associated in fact, who engaged in, and whose
3 activities affected, interstate and foreign commerce. The
4 enterprise constituted an ongoing organization whose members
5 functioned as a continuing unit for a common purpose of achieving
6 the objectives of the enterprise.

GENERAL BACKGROUND

8 2. The Aryan Brotherhood is a powerful gang that controls
9 drug distribution and other illegal activity within portions of
10 the California and federal prison systems and has worked to
11 expand its influence over illegal activity conducted outside of
12 prison.

13 3. The Aryan Brotherhood was formed in the California
14 prison system in approximately 1964 by white inmates who wanted
15 to gain power and authority in prison by forming a race-based
16 gang. While it is not necessary to be white to join the Aryan
17 Brotherhood, nearly all of its members are white. All Aryan
18 Brotherhood members are male.

19 4. Although the Aryan Brotherhood began in the California
20 prison system, it has spread to other prison systems. During the
21 early 1970's, members of the Aryan Brotherhood who had entered
22 the federal prison system formed a faction of the Aryan
23 Brotherhood in the federal prison system. Although the
24 California and federal factions have distinct membership and
25 leadership, both are part of one organization called the Aryan
Brotherhood. If a member of either faction enters the prison
system controlled by the other faction, that member automatically
becomes a member in his new prison system. Although there are

1 Aryan Brotherhood members in other prison systems, the California
2 and federal factions are the Aryan Brotherhood's primary
3 factions.

4 5. In addition to Aryan Brotherhood members in prison,
5 there are members who have been released from prison. When Aryan
6 Brotherhood members leave prison, they are required to remain
7 loyal to the Aryan Brotherhood and to work to further the goals
8 of the Aryan Brotherhood while in the community.

9 6. The Aryan Brotherhood enforces its rules and promotes
10 discipline among its members and associates by murdering,
11 attempting to murder, conspiring to murder, assaulting, and
12 threatening those who violate the enterprise's rules or pose a
13 threat to the enterprise. The Aryan Brotherhood also uses murder
14 and the threat of murder to maintain a position of power within
15 the California and federal prison systems. Inmates and others
16 who do not follow the orders of the Aryan Brotherhood are subject
17 to being murdered, as is anyone who uses violence against an
18 Aryan Brotherhood member. Inmates who cooperate with law
19 enforcement authorities are also subject to being murdered.

20 MEMBERSHIP

21 7. Aryan Brotherhood members are recruited from the prison
22 population. In order to be considered for membership in the
23 Aryan Brotherhood, an inmate must be sponsored by a member. Once
24 an inmate is sponsored, he generally must serve a term of
25 "probation" while his conduct is observed by the members of the
26 Aryan Brotherhood. If the inmate's conduct during the
27 probationary period is satisfactory, he is admitted into the
28 Aryan Brotherhood. Once accepted as an Aryan Brotherhood member,

1 the inmate must swear an oath of loyalty, pledging his life to
2 the Aryan Brotherhood.

3 8. Members are required to follow all orders of higher-
4 ranking members. In particular, members are required, when
5 ordered, to kill without hesitation. They are also required to
6 give false testimony in court on behalf of other members.
7 Members who do not fulfill their obligations to the Aryan
8 Brotherhood are subject to being murdered.

9 9. In addition to members, the enterprise includes those
10 closely affiliated with the Aryan Brotherhood, who are called
11 "associates." Associates are required to follow the orders of
12 Aryan Brotherhood members. Associates who do not fulfill their
13 obligations to the Aryan Brotherhood are subject to being
14 murdered.

LEADERSHIP STRUCTURE

16 10. Originally, the Aryan Brotherhood did not have a
17 leadership structure, but instead was governed by consensus. In
18 approximately 1980, with the blessing of the California faction
19 of the Aryan Brotherhood, the members of the federal faction
20 formed a three-man Federal "Commission" with authority over the
21 activities of the federal faction. In approximately 1993, the
22 members of the Federal Commission formed a "council," reporting
23 to the Federal Commission, with authority over day-to-day
24 operations of the federal faction.

25 11. In approximately 1982, inmates in the California
26 faction of the Aryan Brotherhood met and formed a 12-man
27 California Council to govern the faction's affairs. The members
28 of the California Council then formed a three-man California

1 Commission with authority over the California Council and all
2 other California Aryan Brotherhood members. The number of
3 members on the California Council has since been reduced to six.

4 12. In both the California and federal factions of the
5 Aryan Brotherhood, the commission in charge of a particular
6 faction has final authority over all matters involving that
7 faction. A murder of or assault on a member may be carried out
8 only if it is authorized by the commission of the faction to
9 which the member belongs, although the murder of a nonmember does
10 not require commission approval.

11 PURPOSES OF THE ENTERPRISE

12 13. The members of the Aryan Brotherhood and their
13 associates constitute an enterprise, referred to below as "the
14 Aryan Brotherhood," "the Aryan Brotherhood criminal enterprise,"
15 or "the enterprise." The word "member" as used below refers to a
16 full-fledged member of the Aryan Brotherhood. Both members and
17 associates of the Aryan Brotherhood are participants in the Aryan
18 Brotherhood criminal enterprise.

19 14. The purposes of the Aryan Brotherhood criminal
20 enterprise include, but are not limited to, the following:

21 a. Controlling illegal activities, such as narcotics
22 trafficking, gambling, and extortion, within the California and
23 federal prison systems.

24 b. Preserving, protecting, and expanding the power of
25 the Aryan Brotherhood through the use of intimidation, violence,
26 threats of violence, assaults, and murders.

27 c. Promoting and enhancing the Aryan Brotherhood and
28 the activities of its members and associates.

1 THE MEANS AND METHODS OF THE ENTERPRISE

2 15. Among the means and methods by which the defendants and
3 their co-racketeers conduct and participate in the conduct of the
4 affairs of the Aryan Brotherhood criminal enterprise are the
5 following:

6 a. Members of the Aryan Brotherhood use the Aryan
7 Brotherhood criminal enterprise to commit, and attempt and
8 threaten to commit, acts of violence, including murder and
9 assault, to protect and expand the enterprise's criminal
10 operations.

11 b. Members of the Aryan Brotherhood use the Aryan
12 Brotherhood criminal enterprise to promote a climate of fear
13 through violence and threats of violence.

14 c. Members of the Aryan Brotherhood promulgate rules
15 to be followed by all participants in the Aryan Brotherhood
16 criminal enterprise, including the rule that a participant in the
17 enterprise may not act as an informant for law enforcement
18 authorities.

19 d. To enforce the rules of the Aryan Brotherhood
20 criminal enterprise and to promote discipline, the members of the
21 Aryan Brotherhood use the enterprise to murder, attempt to
22 murder, assault, and threaten those participants in the
23 enterprise and others who violate rules or orders, or who pose a
24 threat to the enterprise.

25 e. To generate income, participants in the Aryan
26 Brotherhood criminal enterprise engage in illegal activities
27 under the protection of the enterprise, including narcotics
28 trafficking, bookmaking, extortion, robbery, and contract murder.

1 f. To generate income, participants in the Aryan
2 Brotherhood criminal enterprise require that white inmates
3 engaged in profit-making activities in prison pay "taxes" to the
4 Aryan Brotherhood under threat of violence.

5 g. To generate income, participants in the Aryan
6 Brotherhood criminal enterprise who are not in prison require
7 that white narcotics dealers and other white criminals pay
8 "taxes" to the Aryan Brotherhood under threat of violence.

9 h. To perpetuate the Aryan Brotherhood criminal
10 enterprise, participants in the enterprise attempt to conceal
11 from law enforcement the existence of the Aryan Brotherhood, the
12 identity of its participants, and the ways in which it conducts
13 its affairs.

14 i. To keep secret the activities of the Aryan
15 Brotherhood criminal enterprise, participants in the enterprise
16 communicate using codes and hidden messages, and use a network of
17 Aryan Brotherhood members and associates outside of prison to
18 relay messages to incarcerated members and associates.

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1 COUNT ONE

2 [18 U.S.C. § 1962(c)]

3 16. Paragraphs One through Fifteen of the Introductory
4 Allegations of this Indictment are realleged and incorporated by
5 reference as though fully set forth herein.

6 THE RACKETEERING OFFENSE

7 17. Beginning on a date unknown to the Grand Jury and
8 continuing until at least July 25, 2002, within the Central
9 District of California and elsewhere, defendants BARRY BYRON
10 MILLS, aka "McB," TYLER DAVIS BINGHAM, aka "T.D.," aka "The
11 Hulk," aka "T," aka "Bull," RONALD BOYD SLOCUM, aka "Slo," aka
12 "McKool," MICHAEL PATRICK McELHINEY, aka "Big Mac," DAVID MICHAEL
13 SAHAKIAN, STEVE LOREN SCOTT, aka "Scottie," WAYNE BRIDGEWATER,
14 STEVEN WILLIAM HICKLIN, CHRISTOPHER OVERTON GIBSON, ELLIOTT SCOTT
15 GRIZZLE, aka "Scott," JOHN STANLEY CAMPBELL, JR., JESSE ANTONIO
16 VAN METER, RICHARD SCOTT McINTOSH, CARL EDGAR KNORR, JR., JASON
17 LEE SCHWYHART, and HENRY MICHAEL HOUSTON, aka "Tweak," and others
18 known and unknown, being persons employed by and associated with
19 the Aryan Brotherhood criminal enterprise, described above, and
20 who either were leaders of the enterprise who directed other
21 members of the enterprise in carrying out unlawful and other
22 activities in furtherance of the conduct of the enterprise's
23 affairs or who participated in unlawful and other activities
24 under the direction of leaders of the enterprise in furtherance
25 of the conduct of the enterprise's affairs, unlawfully and
26 knowingly did direct and participate in, directly and indirectly,
27 the conduct of the affairs of the enterprise, which enterprise
28 was engaged in, and the activities of which affected, interstate

1 and foreign commerce, through a pattern of racketeering activity,
2 as that term is defined in Title 18, United States Code, Sections
3 1961(1) and 1961(5), and as set forth below.

4 THE PATTERN OF RACKETEERING ACTIVITY

5 18. The pattern of racketeering activity, as defined in
6 Title 18, United States Code, Sections 1961(1) and 1961(5),
7 consisted of the following acts:

8
9 Racketeering Act One

10 19. The defendant named below committed the following acts
11 involving murder, either one of which constitutes the commission
12 of Racketeering Act One:

13 a. Conspiracy to Murder John Marzloff

14 Beginning on a date unknown to the Grand Jury and continuing
15 until May 20, 1979, defendant BARRY BYRON MILLS and others
16 conspired to murder John Marzloff, and a coconspirator committed
17 an overt act in furtherance of the conspiracy, in violation of
18 Sections 16-4-8 and 16-5-1 of the Official Code of Georgia.

19 b. Murder of John Marzloff

20 On or about May 20, 1979, defendant BARRY BYRON MILLS and
21 others unlawfully, willfully, deliberately, maliciously, and with
22 premeditation and malice aforethought murdered John Marzloff, in
23 violation of Section 16-5-1 of the Official Code of Georgia.

24
25 Racketeering Act Two

26 20. The defendant named below committed the following acts
27 involving murder, either one of which constitutes the commission
28 of Racketeering Act Two:

1 a. Conspiracy to Murder Robert Hogan

2 Beginning on a date unknown to the Grand Jury and continuing
3 until June 8, 1980, defendant BARRY BYRON MILLS and others
4 conspired to murder Robert Hogan, and a coconspirator committed
5 an overt act in furtherance of the conspiracy, in violation of
6 Illinois Criminal Code Sections 8-2 and 9-1.

7 b. Murder of Robert Hogan

8 On or about June 8, 1980, defendant BARRY BYRON MILLS and
9 others unlawfully, willfully, deliberately, maliciously, and with
10 premeditation and malice aforethought did aid, abet, advise,
11 encourage, and otherwise willfully participate in the murder of
12 Robert Hogan, in violation of Illinois Criminal Code Sections 5-2
13 and 9-1.

14

15 Racketeering Act Three

16 21. The defendants named below committed the following acts
17 involving murder, either one of which constitutes the commission
18 of Racketeering Act Three:

19 a. Conspiracy to Murder Richard Barnes

20 Beginning on a date unknown to the Grand Jury and continuing
21 until February 13, 1983, within the Central District of
22 California and elsewhere, defendant RONALD BOYD SLOCUM and others
23 conspired to murder Richard Barnes, and a coconspirator committed
24 an overt act in furtherance of the conspiracy, in violation of
25 California Penal Code Sections 182 and 187.

26 b. Murder of Richard Barnes

27 On or about February 13, 1983, within the Central District
28 of California and elsewhere, defendant RONALD BOYD SLOCUM and

1 others unlawfully, willfully, deliberately, maliciously, and with
2 premeditation and malice aforethought did aid, abet, advise,
3 encourage, and otherwise willfully participate in the murder of
4 Richard Barnes, in violation of California Penal Code Sections 31
5 and 187.

6

7 Racketeering Act Four

8 22. The defendant named below committed the following acts
9 involving murder, either one of which constitutes the commission
10 of Racketeering Act Four:

11 a. Conspiracy to Murder Gregory Keefer

12 Beginning on a date unknown to the Grand Jury and continuing
13 until September 23, 1983, defendant BARRY BYRON MILLS and others
14 conspired to murder Gregory Keefer, and a coconspirator committed
15 an overt act in furtherance of the conspiracy, in violation of
16 Illinois Criminal Code Sections 8-2 and 9-1.

17 b. Murder of Gregory Keefer

18 On or about September 23, 1983, defendant BARRY BYRON MILLS
19 and others unlawfully, willfully, deliberately, maliciously, and
20 with premeditation and malice aforethought did aid, abet, advise,
21 encourage, and otherwise willfully participate in the murder of
22 Gregory Keefer, in violation of Illinois Criminal Code Sections
23 5-2 and 9-1.

24

25 Racketeering Act Five

26 23. The defendants named below committed the following acts
27 involving murder, either one of which constitutes the commission
28 of Racketeering Act Five:

1 a. Conspiracy to Murder Richard Andreasen

2 Beginning on a date unknown to the Grand Jury and continuing
3 until October 6, 1983, within the Central District of California
4 and elsewhere, defendants BARRY BYRON MILLS and RONALD BOYD
5 SLOCUM, and others, conspired to murder Richard Andreasen, and a
6 coconspirator committed an overt act in furtherance of the
7 conspiracy, in violation of Kansas Criminal Code Sections 21-3302
8 and 21-3401.

9 b. Murder of Richard Andreasen

10 On or about October 6, 1983, within the Central District of
11 California and elsewhere, defendants BARRY BYRON MILLS and RONALD
12 BOYD SLOCUM, and others, unlawfully, willfully, deliberately,
13 maliciously, and with premeditation and malice aforethought did
14 aid, abet, advise, encourage, and otherwise willfully participate
15 in the murder of Richard Andreasen, in violation of Kansas
16 Criminal Code Sections 21-3205 and 21-3401.

17

18 Racketeering Act Six

19 24. The defendants named below committed the following acts
20 involving murder, either one of which constitutes the commission
21 of Racketeering Act Six:

22 a. Conspiracy to Murder Thomas Lamb

23 Beginning on a date unknown to the Grand Jury and continuing
24 until October 15, 1988, within the Central District of California
25 and elsewhere, defendants BARRY BYRON MILLS, RONALD BOYD SLOCUM,
26 and JOHN STANLEY CAMPBELL, JR., and others, conspired to murder
27 Thomas Lamb, and a coconspirator committed an overt act in
28 furtherance of the conspiracy, in violation of Illinois Criminal

1 Code Sections 8-2 and 9-1.

2 b. Murder of Thomas Lamb

3 On or about October 15, 1988, within the Central District of
4 California and elsewhere, defendants BARRY BYRON MILLS, RONALD
5 BOYD SLOCUM, and JOHN STANLEY CAMPBELL, JR., and others,
6 unlawfully, willfully, deliberately, maliciously, and with
7 premeditation and malice aforethought did aid, abet, advise,
8 encourage, and otherwise willfully participate in the murder of
9 Thomas Lamb, in violation of Illinois Criminal Code Sections 5-2
10 and 9-1.

11

12 Racketeering Act Seven

13 25. The defendants named below committed the following acts
14 involving murder, either one of which constitutes the commission
15 of Racketeering Act Seven:

16 a. Conspiracy to Murder Arva Lee Ray

17 Beginning on a date unknown to the Grand Jury and continuing
18 until August 9, 1989, within the Central District of California
19 and elsewhere, defendants BARRY BYRON MILLS, TYLER DAVIS BINGHAM,
20 and RONALD BOYD SLOCUM, and others, conspired to murder Arva Lee
21 Ray, and a coconspirator committed an overt act in furtherance of
22 the conspiracy, in violation of California Penal Code Sections
23 182 and 187.

24 b. Murder of Arva Lee Ray

25 On or about August 9, 1989, within the Central District of
26 California and elsewhere, defendants BARRY BYRON MILLS, TYLER
27 DAVIS BINGHAM, and RONALD BOYD SLOCUM, and others, unlawfully,
28 willfully, deliberately, maliciously, and with premeditation and

1 malice aforethought did aid, abet, advise, encourage, and
2 otherwise willfully participate in the murder of Arva Lee Ray, in
3 violation of California Penal Code Sections 31 and 187.

4

5 Racketeering Act Eight

6 26. The defendants named below committed the following acts
7 involving murder, either one of which constitutes the commission
8 of Racketeering Act Eight:

9 a. Conspiracy to Murder Jeffrey Barnett

10 Beginning on a date unknown to the Grand Jury and continuing
11 until at least March 13, 1990, within the Central District of
12 California and elsewhere, defendants BARRY BYRON MILLS, RONALD
13 BOYD SLOCUM, STEVEN WILLIAM HICKLIN, and CHRISTOPHER OVERTON
14 GIBSON, and others, conspired to murder Jeffrey Barnett, and a
15 coconspirator committed an overt act in furtherance of the
16 conspiracy, in violation of California Penal Code Sections 182
17 and 187.

18 b. Attempted Murder of Jeffrey Barnett

19 On or about March 13, 1990, within the Central District of
20 California and elsewhere, defendants BARRY BYRON MILLS, RONALD
21 BOYD SLOCUM, STEVEN WILLIAM HICKLIN, and CHRISTOPHER OVERTON
22 GIBSON, and others, unlawfully, willfully, deliberately,
23 maliciously, and with premeditation and malice aforethought did
24 aid, abet, advise, encourage, and otherwise willfully participate
25 in the attempted murder of Jeffrey Barnett, in violation of
26 California Penal Code Sections 31, 187, and 664.

27

28

1 Racketeering Act Nine

2 27. The defendants named below committed the following acts
3 involving murder, either one of which constitutes the commission
4 of Racketeering Act Nine:

5 a. Conspiracy to Murder Ismael Benitez-Mendez

6 Beginning on a date unknown to the Grand Jury and continuing
7 until at least January 4, 1992, defendants TYLER DAVIS BINGHAM
8 and STEVE LOREN SCOTT, and others, conspired to murder Ismael
9 Benitez-Mendez, and a coconspirator committed an overt act in
10 furtherance of the conspiracy, in violation of Kansas Criminal
11 Code Sections 21-3302 and 21-3401.

12 b. Attempted Murder of Ismael Benitez-Mendez

13 On or about January 4, 1992, defendants TYLER DAVIS BINGHAM
14 and STEVE LOREN SCOTT, and others, unlawfully, willfully,
15 deliberately, maliciously, and with premeditation and malice
16 aforethought did aid, abet, advise, encourage, and otherwise
17 willfully participate in the attempted murder of Ismael Benitez-
18 Mendez, in violation of Kansas Criminal Code Sections 21-3205,
19 21-3301, and 21-3401.

20

21 Racketeering Act Ten

22 28. The defendants named below committed the following acts
23 involving murder, either one of which constitutes the commission
24 of Racketeering Act Ten:

25 a. Conspiracy to Murder Joel Burkett

26 Beginning on a date unknown to the Grand Jury and continuing
27 until at least March 1, 1992, within the Central District of
28 California and elsewhere, defendants BARRY BYRON MILLS, RONALD

1 BOYD SLOCUM, and DAVID MICHAEL SAHAKIAN, and others, conspired to
2 murder Joel Burkett, and a coconspirator committed an overt act
3 in furtherance of the conspiracy, in violation of Illinois
4 Criminal Code Sections 8-2 and 9-1.

b. Attempted Murder of Joel Burkett

On or about March 1, 1992, within the Central District of California and elsewhere, defendants BARRY BYRON MILLS, RONALD BOYD SLOCUM, and DAVID MICHAEL SAHAKIAN, and others, unlawfully, willfully, deliberately, maliciously, and with premeditation and malice aforethought did aid, abet, advise, encourage, and otherwise willfully participate in the attempted murder of Joel Burkett, in violation of Illinois Criminal Code Sections 5-2, 8-4, and 9-1.

14

15 | Racketeering Act Eleven

16 29. The defendant named below committed the following acts
17 involving the distribution of narcotics, any one of which
18 constitutes the commission of Racketeering Act Eleven:

19 a. Use of a Communication Facility to Facilitate
20 Heroin Distribution on August 22, 1992

21 On or about August 22, 1992, within the Central District of
22 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
23 and intentionally used a communication facility, namely, a
24 telephone, in causing or facilitating the commission of acts
25 constituting a felony under the Controlled Substances Act, that
26 is, distribution of heroin, in violation of Title 21, United
27 States Code, Section 841(a)(1), all in violation of Title 21,
28 United States Code, Section 843(b).

1 b. Use of a Communication Facility to Facilitate
2 Heroin Distribution on August 24, 1992

3 On or about August 24, 1992, within the Central District of
4 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
5 and intentionally used a communication facility, namely, a
6 telephone, in causing or facilitating the commission of acts
7 constituting a felony under the Controlled Substances Act, that
8 is, distribution of heroin, in violation of Title 21, United
9 States Code, Section 841(a)(1), all in violation of Title 21,
10 United States Code, Section 843(b).

11 c. Use of a Communication Facility to Facilitate
12 Heroin Distribution on August 25, 1992

13 On or about August 25, 1992, within the Central District of
14 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
15 and intentionally used a communication facility, namely, a
16 telephone, in causing or facilitating the commission of acts
17 constituting a felony under the Controlled Substances Act, that
18 is, distribution of heroin, in violation of Title 21, United
19 States Code, Section 841(a)(1), all in violation of Title 21,
20 United States Code, Section 843(b).

21
22 Racketeering Act Twelve

23 30. The defendant named below committed the following acts
24 involving the distribution of narcotics, either one of which
25 constitutes the commission of Racketeering Act Twelve:

26 a. Use of a Communication Facility to Facilitate
27 Heroin Distribution on October 4, 1992

28 On or about October 4, 1992, within the Central District of

1 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
2 and intentionally used a communication facility, namely, a
3 telephone, in causing or facilitating the commission of acts
4 constituting a felony under the Controlled Substances Act, that
5 is, distribution of heroin, in violation of Title 21, United
6 States Code, Section 841(a)(1), all in violation of Title 21,
7 United States Code, Section 843(b).

8 b. Use of a Communication Facility to Facilitate
9 Heroin Distribution on October 6, 1992

10 On or about October 6, 1992, within the Central District of
11 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
12 and intentionally used a communication facility, namely, a
13 telephone, in causing or facilitating the commission of acts
14 constituting a felony under the Controlled Substances Act, that
15 is, distribution of heroin, in violation of Title 21, United
16 States Code, Section 841(a)(1), all in violation of Title 21,
17 United States Code, Section 843(b).

18

19 Racketeering Act Thirteen

20 31. The defendant named below committed the following acts
21 involving the distribution of narcotics, either one of which
22 constitutes the commission of Racketeering Act Thirteen:

23 a. Use of a Communication Facility to Facilitate
24 Heroin Distribution on November 12, 1992

25 On or about November 12, 1992, within the Central District
26 of California and elsewhere, defendant RONALD BOYD SLOCUM
27 knowingly and intentionally used a communication facility,
28 namely, a telephone, in causing or facilitating the commission of

1 acts constituting a felony under the Controlled Substances Act,
2 that is, distribution of heroin, in violation of Title 21, United
3 States Code, Section 841(a)(1), all in violation of Title 21,
4 United States Code, Section 843(b).

5 b. Use of a Communication Facility to Facilitate
6 Heroin Distribution on November 13, 1992

7 On or about November 13, 1992, within the Central District
8 of California and elsewhere, defendant RONALD BOYD SLOCUM
9 knowingly and intentionally used a communication facility,
10 namely, a telephone, in causing or facilitating the commission of
11 acts constituting a felony under the Controlled Substances Act,
12 that is, distribution of heroin, in violation of Title 21, United
13 States Code, Section 841(a)(1), all in violation of Title 21,
14 United States Code, Section 843(b).

15

16 Racketeering Act Fourteen

17 32. The defendant named below committed the following acts
18 involving the distribution of narcotics, any one of which
19 constitutes the commission of Racketeering Act Fourteen:

20 a. Use of a Communication Facility to Facilitate
21 Heroin Distribution on January 1, 1993

22 On or about January 1, 1993, within the Central District of
23 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
24 and intentionally used a communication facility, namely, a
25 telephone, in causing or facilitating the commission of acts
26 constituting a felony under the Controlled Substances Act, that
27 is, distribution of heroin, in violation of Title 21, United
28 States Code, Section 841(a)(1), all in violation of Title 21,

1 United States Code, Section 843(b).

2 b. Use of a Communication Facility to Facilitate
3 Heroin Distribution on January 9, 1993

4 On or about January 9, 1993, within the Central District of
5 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
6 and intentionally used a communication facility, namely, a
7 telephone, in causing or facilitating the commission of acts
8 constituting a felony under the Controlled Substances Act, that
9 is, distribution of heroin, in violation of Title 21, United
10 States Code, Section 841(a)(1), all in violation of Title 21,
11 United States Code, Section 843(b).

12 c. Use of a Communication Facility to Facilitate
13 Heroin Distribution on January 20, 1993

14 On or about January 20, 1993, within the Central District of
15 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
16 and intentionally used a communication facility, namely, a
17 telephone, in causing or facilitating the commission of acts
18 constituting a felony under the Controlled Substances Act, that
19 is, distribution of heroin, in violation of Title 21, United
20 States Code, Section 841(a)(1), all in violation of Title 21,
21 United States Code, Section 843(b).

22

23 Racketeering Act Fifteen

24 33. The defendants named below committed the following acts
25 involving murder, either one of which constitutes the commission
26 of Racketeering Act Fifteen:

27 a. Conspiracy to Murder William McKinney

28 Beginning on a date unknown to the Grand Jury and continuing

1 until January 8, 1993, within the Central District of California
2 and elsewhere, defendants BARRY BYRON MILLS, TYLER DAVIS BINGHAM,
3 and RONALD BOYD SLOCUM, and others, conspired to murder William
4 McKinney, and a coconspirator committed an overt act in
5 furtherance of the conspiracy, in violation of California Penal
6 Code Sections 182 and 187.

7 b. Murder of William McKinney

8 On or about December 28, 1992, within the Central District
9 of California and elsewhere, defendants BARRY BYRON MILLS, TYLER
10 DAVIS BINGHAM, and RONALD BOYD SLOCUM, and others, unlawfully,
11 willfully, deliberately, maliciously, and with premeditation and
12 malice aforethought did aid, abet, advise, encourage, and
13 otherwise willfully participate in the murder of William
14 McKinney, in violation of California Penal Code Sections 31 and
15 187.

16

17 Racketeering Act Sixteen

18 34. The defendant named below committed the following acts
19 involving the distribution of narcotics, either one of which
20 constitutes the commission of Racketeering Act Sixteen:

21 a. Use of a Communication Facility to Facilitate
22 Heroin Distribution on May 3, 1993

23 On or about May 3, 1993, within the Central District of
24 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
25 and intentionally used a communication facility, namely, a
26 telephone, in causing or facilitating the commission of acts
27 constituting a felony under the Controlled Substances Act, that
28 is, distribution of heroin, in violation of Title 21, United

1 States Code, Section 841(a)(1), all in violation of Title 21,
2 United States Code, Section 843(b).

3 b. Use of a Communication Facility to Facilitate
4 Heroin Distribution on May 17, 1993

5 On or about May 17, 1993, within the Central District of
6 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
7 and intentionally used a communication facility, namely, a
8 telephone, in causing or facilitating the commission of acts
9 constituting a felony under the Controlled Substances Act, that
10 is, distribution of heroin, in violation of Title 21, United
11 States Code, Section 841(a)(1), all in violation of Title 21,
12 United States Code, Section 843(b).

13

14 Racketeering Act Seventeen

15 35. The defendant named below committed the following acts
16 involving the distribution of narcotics, any one of which
17 constitutes the commission of Racketeering Act Seventeen:

18 a. Use of a Communication Facility to Facilitate
19 Heroin Distribution on July 3, 1993

20 On or about July 3, 1993, within the Central District of
21 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
22 and intentionally used a communication facility, namely, a
23 telephone, in causing or facilitating the commission of acts
24 constituting a felony under the Controlled Substances Act, that
25 is, distribution of heroin, in violation of Title 21, United
26 States Code, Section 841(a)(1), all in violation of Title 21,
27 United States Code, Section 843(b).

28

b. Use of a Communication Facility to Facilitate Heroin Distribution on July 14, 1993

3 On or about July 14, 1993, within the Central District of
4 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
5 and intentionally used a communication facility, namely, a
6 telephone, in causing or facilitating the commission of acts
7 constituting a felony under the Controlled Substances Act, that
8 is, distribution of heroin, in violation of Title 21, United
9 States Code, Section 841(a)(1), all in violation of Title 21,
10 United States Code, Section 843(b).

c. Use of a Communication Facility to Facilitate Heroin Distribution on July 29, 1993

13 On or about July 29, 1993, within the Central District of
14 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
15 and intentionally used a communication facility, namely, a
16 telephone, in causing or facilitating the commission of acts
17 constituting a felony under the Controlled Substances Act, that
18 is, distribution of heroin, in violation of Title 21, United
19 States Code, Section 841(a)(1), all in violation of Title 21,
20 United States Code, Section 843(b).

22 | Racketeering Act Eighteen

23 36. The defendant named below committed the following acts
24 involving the distribution of narcotics, either one of which
25 constitutes the commission of Racketeering Act Eighteen:

a. Use of a Communication Facility to Facilitate Heroin Distribution on August 17, 1993

On or about August 17, 1993, within the Central District of

1 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
2 and intentionally used a communication facility, namely, a
3 telephone, in causing or facilitating the commission of acts
4 constituting a felony under the Controlled Substances Act, that
5 is, distribution of heroin, in violation of Title 21, United
6 States Code, Section 841(a)(1), all in violation of Title 21,
7 United States Code, Section 843(b).

8 b. Use of a Communication Facility to Facilitate
9 Heroin Distribution on August 20, 1993

10 On or about August 20, 1993, within the Central District of
11 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
12 and intentionally used a communication facility, namely, a
13 telephone, in causing or facilitating the commission of acts
14 constituting a felony under the Controlled Substances Act, that
15 is, distribution of heroin, in violation of Title 21, United
16 States Code, Section 841(a)(1), all in violation of Title 21,
17 United States Code, Section 843(b).

18

19 Racketeering Act Nineteen

20 Use of a Communication Facility to Facilitate Heroin Distribution

21 37. On or about September 10, 1993, within the Central
22 District of California and elsewhere, defendant RONALD BOYD
23 SLOCUM knowingly and intentionally used a communication facility,
24 namely, a telephone, in causing or facilitating the commission of
25 acts constituting a felony under the Controlled Substances Act,
26 that is, distribution of heroin, in violation of Title 21, United
27 States Code, Section 841(a)(1), all in violation of Title 21,
28 United States Code, Section 843(b).

1 Racketeering Act Twenty

2 38. The defendants named below committed the following acts
3 involving murder, either one of which constitutes the commission
4 of Racketeering Act Twenty:

5 a. Conspiracy to Murder Jimmy Lee Inman

6 Beginning on a date unknown to the Grand Jury and continuing
7 until at least September 30, 1993, within the Central District of
8 California and elsewhere, defendants BARRY BYRON MILLS, RONALD
9 BOYD SLOCUM, and DAVID MICHAEL SAHAKIAN, and others, conspired to
10 murder Jimmy Lee Inman, and a coconspirator committed an overt
11 act in furtherance of the conspiracy, in violation of Illinois
12 Criminal Code Sections 8-2 and 9-1.

13 b. Attempted Murder of Jimmy Lee Inman

14 On or about September 30, 1993, within the Central District
15 of California and elsewhere, defendants BARRY BYRON MILLS, RONALD
16 BOYD SLOCUM, and DAVID MICHAEL SAHAKIAN, and others, unlawfully,
17 willfully, deliberately, maliciously, and with premeditation and
18 malice aforethought did aid, abet, advise, encourage, and
19 otherwise willfully participate in the attempted murder of Jimmy
20 Lee Inman, in violation of Illinois Criminal Code Sections 5-2,
21 8-4, and 9-1.

22

23 Racketeering Act Twenty-One

24 39. The defendant named below committed the following acts
25 involving the distribution of narcotics, either one of which
26 constitutes the commission of Racketeering Act Twenty-One:

27

28

1 a. Use of a Communication Facility to Facilitate
2 Heroin Distribution on October 18, 1993

3 On or about October 18, 1993, within the Central District of
4 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
5 and intentionally used a communication facility, namely, a
6 telephone, in causing or facilitating the commission of acts
7 constituting a felony under the Controlled Substances Act, that
8 is, distribution of heroin, in violation of Title 21, United
9 States Code, Section 841(a)(1), all in violation of Title 21,
10 United States Code, Section 843(b).

11 b. Use of a Communication Facility to Facilitate
12 Heroin Distribution on October 24, 1993

13 On or about October 24, 1993, within the Central District of
14 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
15 and intentionally used a communication facility, namely, a
16 telephone, in causing or facilitating the commission of acts
17 constituting a felony under the Controlled Substances Act, that
18 is, distribution of heroin, in violation of Title 21, United
19 States Code, Section 841(a)(1), all in violation of Title 21,
20 United States Code, Section 843(b).

21
22 Racketeering Act Twenty-Two

23 Use of a Communication Facility to Facilitate Heroin Distribution

24 40. On or about December 28, 1993, within the Central
25 District of California and elsewhere, defendant RONALD BOYD
26 SLOCUM knowingly and intentionally used a communication facility,
27 namely, a telephone, in causing or facilitating the commission of
28 acts constituting a felony under the Controlled Substances Act,

1 that is, distribution of heroin, in violation of Title 21, United
2 States Code, Section 841(a)(1), all in violation of Title 21,
3 United States Code, Section 843(b).

4

5 Racketeering Act Twenty-Three

6 Use of a Communication Facility to Facilitate Heroin Distribution

7 41. On or about February 12, 1994, within the Central
8 District of California and elsewhere, defendant RONALD BOYD
9 SLOCUM knowingly and intentionally used a communication facility,
10 namely, a telephone, in causing or facilitating the commission of
11 acts constituting a felony under the Controlled Substances Act,
12 that is, distribution of heroin, in violation of Title 21, United
13 States Code, Section 841(a)(1), all in violation of Title 21,
14 United States Code, Section 843(b).

15

16 Racketeering Act Twenty-Four

17 Use of a Communication Facility to Facilitate Heroin Distribution

18 42. On or about June 3, 1994, within the Central District
19 of California and elsewhere, defendant RONALD BOYD SLOCUM
20 knowingly and intentionally used a communication facility,
21 namely, a telephone, in causing or facilitating the commission of
22 acts constituting a felony under the Controlled Substances Act,
23 that is, distribution of heroin, in violation of Title 21, United
24 States Code, Section 841(a)(1), all in violation of Title 21,
25 United States Code, Section 843(b).

26

27

28

1 Racketeering Act Twenty-Five

2 Use of a Communication Facility to Facilitate Heroin Distribution

3 43. On or about October 4, 1994, within the Central
4 District of California and elsewhere, defendant RONALD BOYD
5 SLOCUM knowingly and intentionally used a communication facility,
6 namely, a telephone, in causing or facilitating the commission of
7 acts constituting a felony under the Controlled Substances Act,
8 that is, distribution of heroin, in violation of Title 21, United
9 States Code, Section 841(a)(1), all in violation of Title 21,
10 United States Code, Section 843(b).

11

12 Racketeering Act Twenty-Six

13 44. The defendant named below committed the following acts
14 involving the distribution of narcotics, either one of which
15 constitutes the commission of Racketeering Act Twenty-Six:

16 a. Use of a Communication Facility to Facilitate
17 Heroin Distribution on February 1, 1995

18 On or about February 1, 1995, within the Central District of
19 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
20 and intentionally used a communication facility, namely, a
21 telephone, in causing or facilitating the commission of acts
22 constituting a felony under the Controlled Substances Act, that
23 is, distribution of heroin, in violation of Title 21, United
24 States Code, Section 841(a)(1), all in violation of Title 21,
25 United States Code, Section 843(b).

26 b. Use of a Communication Facility to Facilitate
27 Heroin Distribution on February 17, 1995

28 On or about February 17, 1995, within the Central District

1 of California and elsewhere, defendant RONALD BOYD SLOCUM
2 knowingly and intentionally used a communication facility,
3 namely, a telephone, in causing or facilitating the commission of
4 acts constituting a felony under the Controlled Substances Act,
5 that is, distribution of heroin, in violation of Title 21, United
6 States Code, Section 841(a)(1), all in violation of Title 21,
7 United States Code, Section 843(b).

8

9 Racketeering Act Twenty-Seven

10 Use of a Communication Facility to Facilitate Heroin Distribution

11 45. On or about May 7, 1995, within the Central District of
12 California and elsewhere, defendant RONALD BOYD SLOCUM knowingly
13 and intentionally used a communication facility, namely, a
14 telephone, in causing or facilitating the commission of acts
15 constituting a felony under the Controlled Substances Act, that
16 is, distribution of heroin, in violation of Title 21, United
17 States Code, Section 841(a)(1), all in violation of Title 21,
18 United States Code, Section 843(b).

19

20 Racketeering Act Twenty-Eight

21 Use of a Communication Facility to Facilitate Heroin Distribution

22 46. On or about July 29, 1995, within the Central District
23 of California and elsewhere, defendant RONALD BOYD SLOCUM
24 knowingly and intentionally used a communication facility,
25 namely, a telephone, in causing or facilitating the commission of
26 acts constituting a felony under the Controlled Substances Act,
27 that is, distribution of heroin, in violation of Title 21, United
28 States Code, Section 841(a)(1), all in violation of Title 21,

1 United States Code, Section 843(b).

2

3 Racketeering Act Twenty-Nine

4 47. The defendants named below committed the following acts
5 involving murder, either one of which constitutes the commission
6 of Racketeering Act Twenty-Nine:

7 a. Conspiracy to Murder Charles Leger

8 Beginning on a date unknown to the Grand Jury and continuing
9 until August 25, 1995, defendants MICHAEL PATRICK McELHINEY and
10 DAVID MICHAEL SAHAKIAN, and others, conspired to murder Charles
11 Leger, and a coconspirator committed an overt act in furtherance
12 of the conspiracy, in violation of Kansas Criminal Code Sections
13 21-3302 and 21-3401.

14 b. Murder of Charles Leger

15 On or about August 25, 1995, defendants MICHAEL PATRICK
16 McELHINEY and DAVID MICHAEL SAHAKIAN, and others, unlawfully,
17 willfully, deliberately, maliciously, and with premeditation and
18 malice aforethought did aid, abet, advise, encourage, and
19 otherwise willfully participate in the murder of Charles Leger,
20 in violation of Kansas Criminal Code Sections 21-3205 and 21-
21 3401.

22

23 Racketeering Act Thirty

24 Conspiracy to Distribute Controlled Substances

25 48. Beginning on a date unknown to the Grand Jury and
26 continuing until at least September 21, 1995, within the Central
27 District of California and elsewhere, defendants RONALD BOYD
28 SLOCUM, MICHAEL PATRICK McELHINEY, and DAVID MICHAEL SAHAKIAN,

1 and others, knowingly and willfully conspired and agreed with
2 each other to commit an offense against the United States,
3 namely, to distribute controlled substances, including heroin,
4 methamphetamine, and cocaine, in violation of Title 21, United
5 States Code, Sections 841(a)(1) and 846.

6

7 Racketeering Act Thirty-One

8 Use of a Communication Facility to Facilitate Heroin Distribution

9 49. On or about September 10, 1996, within the Central
10 District of California and elsewhere, defendant RONALD BOYD
11 SLOCUM knowingly and intentionally used a communication facility,
12 namely, a telephone, in causing or facilitating the commission of
13 acts constituting a felony under the Controlled Substances Act,
14 that is, distribution of heroin, in violation of Title 21, United
15 States Code, Section 841(a)(1), all in violation of Title 21,
16 United States Code, Section 843(b).

17

18 Racketeering Act Thirty-Two

19 50. The defendants named below committed the following acts
20 involving murder, either one of which constitutes the commission
21 of Racketeering Act Thirty-Two:

22 a. Conspiracy to Murder Michael Nevergall

23 Beginning on a date unknown to the Grand Jury and continuing
24 until at least April 8, 1997, defendants BARRY BYRON MILLS and
25 CHRISTOPHER OVERTON GIBSON, and others, conspired to murder
26 Michael Nevergall, and a coconspirator committed an overt act in
27 furtherance of the conspiracy, in violation of Colorado Criminal
28 Code Sections 18-2-201 and 18-3-102.

1 b. Attempted Murder of Michael Nevergall

2 On or about April 8, 1997, defendants BARRY BYRON MILLS and
3 CHRISTOPHER OVERTON GIBSON, and others, unlawfully, willfully,
4 deliberately, maliciously, and with premeditation and malice
5 aforethought did aid, abet, advise, encourage, and otherwise
6 willfully participate in the attempted murder of Michael
7 Nevergall, in violation of Colorado Criminal Code Sections 18-1-
8 603, 18-2-101, and 18-3-102.

9

10 Racketeering Act Thirty-Three

11 51. The defendants named below committed the following acts
12 involving murder, either one of which constitutes the commission
13 of Racketeering Act Thirty-Three:

14 a. Conspiracy to Murder Aaron Marsh

15 Beginning on a date unknown to the Grand Jury and continuing
16 until July 25, 1997, defendant ELLIOTT SCOTT GRIZZLE and others
17 conspired to murder Aaron Marsh, and a coconspirator committed an
18 overt act in furtherance of the conspiracy, in violation of
19 California Penal Code Sections 182 and 187.

20 b. Murder of Aaron Marsh

21 On or about July 25, 1997, defendant ELLIOTT SCOTT GRIZZLE
22 and others unlawfully, willfully, deliberately, maliciously, and
23 with premeditation and malice aforethought did aid, abet, advise,
24 encourage, and otherwise willfully participate in the murder of
25 Aaron Marsh, in violation of California Penal Code Sections 31
26 and 187.

1 Racketeering Act Thirty-Four

2 Conspiracy to Murder Walter Johnson

3 52. Beginning on a date unknown to the Grand Jury and
4 continuing until at least September 1997, defendants BARRY BYRON
5 MILLS, MICHAEL PATRICK McELHINEY, DAVID MICHAEL SAHAKIAN, and
6 JESSE ANTONIO VAN METER, and others, conspired to murder Walter
7 Johnson, and a coconspirator committed an overt act in
8 furtherance of the conspiracy, in violation of Illinois Criminal
9 Code Sections 8-2 and 9-1.

10 Racketeering Act Thirty-Five

11 Conspiracy to Murder Frank Ruopoli

12 53. Beginning on a date unknown to the Grand Jury and
13 continuing until at least June 1998, within the Central District
14 of California and elsewhere, defendants BARRY BYRON MILLS and
15 RONALD BOYD SLOCUM, and others, conspired to murder Frank
16 Ruopoli, and a coconspirator committed an overt act in
17 furtherance of the conspiracy, in violation of California Penal
18 Code Sections 182 and 187.

19 Racketeering Act Thirty-Six

20 54. The defendant named below committed the following acts
21 involving murder, either one of which constitutes the commission
22 of Racketeering Act Thirty-Six:

23 a. First Solicitation to Murder Jason Butler

24 On or about October 7, 2000, within the Central District of
25 California and elsewhere, defendant ELLIOTT SCOTT GRIZZLE did
26 unlawfully and with the intent that the crime be committed

1 solicit another, namely, Jonathan Schauerman, to commit and join
2 in the commission of the murder of Jason Butler, in violation of
3 California Penal Code Section 653f(b).

4 b. Second Solicitation to Murder Jason Butler

5 On or about October 31, 2000, within the Central District of
6 California and elsewhere, defendant ELLIOTT SCOTT GRIZZLE did
7 unlawfully and with the intent that the crime be committed
8 solicit another, namely, Jonathan Schauerman, to commit and join
9 in the commission of the murder of Jason Butler, in violation of
10 California Penal Code Section 653f(b).

11

12 Racketeering Act Thirty-Seven

13 Conspiracy to Murder Black Inmates

14 55. Beginning on a date unknown to the Grand Jury and
15 continuing until at least November 24, 2000, within the Central
16 District of California and elsewhere, defendants BARRY BYRON
17 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, MICHAEL PATRICK
18 McELHINEY, DAVID MICHAEL SAHAKIAN, STEVE LOREN SCOTT, WAYNE
19 BRIDGEWATER, STEVEN WILLIAM HICKLIN, CHRISTOPHER OVERTON GIBSON,
20 JOHN STANLEY CAMPBELL, JR., JESSE ANTONIO VAN METER, RICHARD
21 SCOTT McINTOSH, CARL EDGAR KNORR, JR., JASON LEE SCHWYHART, and
22 HENRY MICHAEL HOUSTON, and others, conspired to murder black
23 inmates in the institutions of the Federal Bureau of Prisons, and
24 a coconspirator committed an overt act in furtherance of the
25 conspiracy, in violation of California Penal Code Sections 182
26 and 187.

27

28

1 Racketeering Act Thirty-Eight

2 Murder of Frank Joyner

3 56. On or about August 28, 1997, within the Central
4 District of California and elsewhere, defendants BARRY BYRON
5 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, WAYNE
6 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
7 HENRY MICHAEL HOUSTON, and others, unlawfully, willfully,
8 deliberately, maliciously, and with premeditation and malice
9 aforethought did aid, abet, advise, encourage, and otherwise
10 willfully participate in the murder of Frank Joyner, in violation
11 of Pennsylvania Criminal Code Sections 306 and 2502.

12

13 Racketeering Act Thirty-Nine

14 Murder of Abdul Salaam

15 57. On or about August 28, 1997, within the Central
16 District of California and elsewhere, defendants BARRY BYRON
17 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, WAYNE
18 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
19 HENRY MICHAEL HOUSTON, and others, unlawfully, willfully,
20 deliberately, maliciously, and with premeditation and malice
21 aforethought did aid, abet, advise, encourage, and otherwise
22 willfully participate in the murder of Abdul Salaam, in violation
23 of Pennsylvania Criminal Code Sections 306 and 2502.

24

25 Racketeering Act Forty

26 Attempted Murder of Titus Webster

27 58. On or about August 28, 1997, within the Central
28 District of California and elsewhere, defendants BARRY BYRON

1 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, WAYNE
2 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
3 HENRY MICHAEL HOUSTON, and others, unlawfully, willfully,
4 deliberately, maliciously, and with premeditation and malice
5 aforethought did aid, abet, advise, encourage, and otherwise
6 willfully participate in the attempted murder of Titus Webster,
7 in violation of Pennsylvania Criminal Code Sections 306, 901, and
8 2502.

9
10 Racketeering Act Forty-One

11 Attempted Murder of Byron Ball

12 59. On or about August 28, 1997, within the Central
13 District of California and elsewhere, defendants BARRY BYRON
14 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, WAYNE
15 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
16 HENRY MICHAEL HOUSTON, and others, unlawfully, willfully,
17 deliberately, maliciously, and with premeditation and malice
18 aforethought did aid, abet, advise, encourage, and otherwise
19 willfully participate in the attempted murder of Byron Ball, in
20 violation of Pennsylvania Criminal Code Sections 306, 901, and
21 2502.

22
23 Racketeering Act Forty-Two

24 Attempted Murder of Harold Roberts

25 60. On or about August 28, 1997, within the Central
26 District of California and elsewhere, defendants BARRY BYRON
27 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, WAYNE
28 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and

1 HENRY MICHAEL HOUSTON, and others, unlawfully, willfully,
2 deliberately, maliciously, and with premeditation and malice
3 aforethought did aid, abet, advise, encourage, and otherwise
4 willfully participate in the attempted murder of Harold Roberts,
5 in violation of Pennsylvania Criminal Code Sections 306, 901, and
6 2502.

7

8 Racketeering Act Forty-Three

9 Attempted Murder of Larry Fortune

10 61. On or about August 28, 1997, within the Central
11 District of California and elsewhere, defendants BARRY BYRON
12 MILLS, TYLER DAVIS BINGHAM, RONALD BOYD SLOCUM, WAYNE
13 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
14 HENRY MICHAEL HOUSTON, and others, unlawfully, willfully,
15 deliberately, maliciously, and with premeditation and malice
16 aforethought did aid, abet, advise, encourage, and otherwise
17 willfully participate in the attempted murder of Larry Fortune,
18 in violation of Pennsylvania Criminal Code Sections 306, 901, and
19 2502.

20

21 Racketeering Act Forty-Four

22 Attempted Murder of Wardell Hillard

23 62. On or about November 12, 1997, within the Central
24 District of California and elsewhere, defendants BARRY BYRON
25 MILLS and JESSE ANTONIO VAN METER, and others, unlawfully,
26 willfully, deliberately, maliciously, and with premeditation and
27 malice aforethought did aid, abet, advise, encourage, and
28 otherwise willfully participate in the attempted murder of

1 Wardell Hillard, in violation of Colorado Criminal Code Sections
2 18-1-603, 18-2-101, and 18-3-102.

3

4 Racketeering Act Forty-Five

5 Murder of Terry Walker

6 . 63. On or about May 18, 1999, within the Central District
7 of California and elsewhere, defendants MICHAEL PATRICK
8 McELHINEY, DAVID MICHAEL SAHAKIAN, RICHARD SCOTT McINTOSH, and
9 CARL EDGAR KNORR, JR., and others, unlawfully, willfully,
10 deliberately, maliciously, and with premeditation and malice
11 aforesought did aid, abet, advise, encourage, and otherwise
12 willfully participate in the murder of Terry Walker, in violation
13 of Illinois Criminal Code Sections 5-2 and 9-1.

14

15 Racketeering Act Forty-Six

16 Attempted Murder of Erving Bond

17 . 64. On or about November 24, 2000, within the Central
18 District of California and elsewhere, defendant STEVE LOREN SCOTT
19 and others unlawfully, willfully, deliberately, maliciously, and
20 with premeditation and malice aforesought did aid, abet, advise,
21 encourage, and otherwise willfully participate in the attempted
22 murder of Erving Bond, in violation of Missouri Revised Statutes
23 Sections 562.041, 564.011, and 565.020.

24

25 All in violation of Title 18, United States Code, Section
26 1962(c).

27

28

1 COUNT TWO

2 [18 U.S.C. § 1962(d)]

3 65. Paragraphs One through Fifteen of the Introductory
4 Allegations of this Indictment are realleged and incorporated by
5 reference as though fully set forth herein.

6 66. From a date unknown to the Grand Jury and continuing
7 until at least July 25, 2002, within the Central District of
8 California and elsewhere, defendants BARRY BYRON MILLS, aka
9 "McB," TYLER DAVIS BINGHAM, aka "T.D.," aka "The Hulk," aka "T,"
10 aka "Bull," JOHN WILLIAM STINSON, aka "Youngster," aka "The
11 Youngest," RICHARD LLOYD TERFLINGER, aka "Bart Simpson," ROBERT
12 LEE GRIFFIN, aka "Blinky," aka "McGrif," RONALD BOYD SLOCUM, aka
13 "Slo," aka "McKool," DAVID ALLEN CHANCE, MICHAEL PATRICK
14 MCELHINEY, aka "Big Mac," DAVID MICHAEL SAHAKIAN, CLEO ROY, aka
15 "Elroy," aka "Cow Hampshire," GLENN RICHARD FILKINS, aka "G,"
16 STEVE LOREN SCOTT, aka "Scottie," WAYNE BRIDGEWATER, STEVEN
17 WILLIAM HICKLIN, CHRISTOPHER OVERTON GIBSON, MICHAEL BRUCE
18 SHEPHERD, aka "Tank," EDWARD TYLER BURNETT, EDGAR WESLEY HEVLE,
19 aka "Snail," MARK ALAN NYQUIST, aka "Big Mark," aka "Mark Owen,"
20 JOHN HENRY HARPER, aka "Turtle," aka "John Henry," GARY JOE
21 LITTRELL, ELLIOTT SCOTT GRIZZLE, aka "Scott," THOMAS LEROY
22 HAMPTON, aka "Lucifer," JOHN STANLEY CAMPBELL, JR., JESSE ANTONIO
23 VAN METER, RICHARD SCOTT McINTOSH, CARL EDGAR KNORR, JR., JASON
24 LEE SCHWYHART, HENRY MICHAEL HOUSTON, aka "Tweak," MANUEL LARRY
25 JACKSON, aka "Cricket," RAFAEL GONZALEZ-MUNOZ, JR., aka "Cisco,"
26 DEBRA LEE STINSON, aka "The Girl Down The Street," JOANNE LOUISE
27 GUTHRIE, aka "Shorty," SEAN MATTHEW DARCY, MARTY LAINE FOAKES,
28 aka "Marty Donahue," LEE ANN MARTIN, BRENDA JO RILEY, aka "Brenda

1 Grizzle," and JOSEPH PRINCIPE, and others known and unknown,
2 being persons employed by and associated with the Aryan
3 Brotherhood criminal enterprise described in Paragraphs One
4 through Fifteen of the Introductory Allegations of this
5 Indictment, as defined in Title 18, United States Code, Section
6 1961(4), which enterprise was engaged in, and the activities of
7 which affected, interstate and foreign commerce, unlawfully,
8 willfully, and knowingly combined, conspired, confederated, and
9 agreed together and with each other to violate Title 18, United
10 States Code, Section 1962(c), that is, to conduct and
11 participate, directly and indirectly, in the conduct of the
12 affairs of the enterprise through a pattern of racketeering
13 activity, as that term is defined in Title 18, United States
14 Code, Sections 1961(1) and 1961(5), consisting of multiple acts
15 involving murder, in violation of Sections 16-4-8 and 16-5-1 of
16 the Official Code of Georgia, Illinois Criminal Code Sections 8-2
17 and 9-1, California Penal Code Sections 182, 187, and 653f(b),
18 Kansas Criminal Code Sections 21-3302 and 21-3401, Colorado
19 Criminal Code Sections 18-2-201 and 18-3-102, Pennsylvania
20 Criminal Code Sections 306 and 2502, and Missouri Revised
21 Statutes Sections 562.041, 564.011, and 565.020; and distribution
22 of controlled substances, including heroin, methamphetamine, and
23 cocaine, in violation of Title 21, United States Code, Sections
24 841(a)(1), 843(b), and 846. It was a further part of the
25 conspiracy that the defendants agreed that a conspirator would
26 commit at least two acts of racketeering in the conduct of the
27 affairs of the enterprise.

28

OVERT ACTS

67. In furtherance of the conspiracy and to accomplish the objects of the conspiracy, the defendants and their coconspirators committed the following overt acts on the dates set forth below:

Organization and Membership

1) In or about 1964, a group of inmates in the California prison system formed the Aryan Brotherhood prison gang.

2) In or about 1973, a group of inmates in the federal prison system formed a federal faction of the Aryan Brotherhood prison gang.

3) In or about January 1978, defendant ROBERT LEE GRIFFIN sponsored Clifford Smith for membership in the Aryan Brotherhood.

4) In or about May 1978, defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, ROBERT LEE GRIFFIN, and RONALD BOYD SLOCUM, among others, voted to allow Clifford Smith to become a member of the Aryan Brotherhood.

5) In or about 1980, defendant BARRY BYRON MILLS and other Aryan Brotherhood members formed a three-member "Federal Commission," including defendant BARRY BYRON MILLS, to govern the activities of the federal faction of the Aryan Brotherhood.

6) In or about February 1982, in the Central District of California, defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, ROBERT LEE GRIFFIN, RONALD BOYD SLOCUM, and EDWARD TYLER BURNETT, and others, met and formed a 12-man "California Council," including defendants JOHN WILLIAM STINSON, RICHARD

1 LLOYD TERFLINGER, ROBERT LEE GRIFFIN, and RONALD BOYD SLOCUM, to
2 govern the activities of the California faction of the Aryan
3 Brotherhood.

4 7) In or about February 1982, in the Central District
5 of California, the members of the California Council met and
6 formed a three-man "California Commission," including defendant
7 ROBERT LEE GRIFFIN, with authority over the council and all other
8 activities of the California faction of the Aryan Brotherhood.

9 8) On or about March 13, 1984, in the Central
10 District of California and elsewhere, defendant JOHN WILLIAM
11 STINSON sent a letter to Pete Pulos informing him that Rick Rose
12 had dropped out of the Aryan Brotherhood.

13 9) In or about September 1985, in the Central
14 District of California and elsewhere, defendant TYLER DAVIS
15 BINGHAM assumed a position as one of the three federal
16 commissioners.

17 10) In or about 1989, the members of the California
18 Commission, including defendant ROBERT LEE GRIFFIN, increased the
19 number of members of the California Commission from three to
20 four.

21 11) In or about 1989, the members of the California
22 Commission, including defendant ROBERT LEE GRIFFIN, named
23 defendants JOHN WILLIAM STINSON and RICHARD LLOYD TERFLINGER to
24 the California Commission.

25 12) In or about 1989, the members of the California
26 Commission, including defendant ROBERT LEE GRIFFIN, disbanded the
27 California Council.

28 13) In or about 1990, in the Central District of

1 California, defendant EDWARD TYLER BURNETT sponsored Brian Healy
2 for membership in the Aryan Brotherhood.

3 14) In or about July 1992, defendant BARRY BYRON MILLS
4 sponsored Lawrence Klaker for membership in the Aryan
5 Brotherhood.

6 15) In or about 1993, defendants BARRY BYRON MILLS and
7 TYLER DAVIS BINGHAM, and others, formed a "Federal Council,"
8 reporting to the Federal Commission, to govern the day-to-day
9 operations of the federal faction of the Aryan Brotherhood.

10 16) In or about 1993, defendants BARRY BYRON MILLS and
11 TYLER DAVIS BINGHAM named defendants DAVID MICHAEL SAHAKIAN, CLEO
12 ROY, and WAYNE BRIDGEWATER to the Federal Council.

13 17) In or about 1994, the members of the California
14 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
15 LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, increased the number of
16 members of the California Commission from four to six.

17 18) In or about 1994, the members of the California
18 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
19 LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, named defendant DAVID
20 ALLEN CHANCE and James Pendleton to the California Commission.

21 19) In or about 1994, defendant JOHN WILLIAM STINSON
22 sponsored defendant ELLIOTT SCOTT GRIZZLE for membership in the
23 Aryan Brotherhood.

24 20) In or about 1994, Mark Glass sponsored defendant
25 GARY JOE LITRELL for membership in the Aryan Brotherhood.

26 21) In or about 1996, defendant BARRY BYRON MILLS
27 sought approval from defendant TYLER DAVIS BINGHAM to promote
28 defendant GLENN RICHARD FILKINS and Kevin Roach to the Federal

1 Council.

2 22) In or about 1996, defendant BARRY BYRON MILLS sent
3 a message to defendant GLENN RICHARD FILKINS proposing that the
4 Aryan Brotherhood take control of the Dirty White Boys prison
5 gang in order to get the Dirty White Boys to do the bidding of
6 the Aryan Brotherhood and to absorb the most capable members of
7 the Dirty White Boys into the Aryan Brotherhood.

8 23) In or about 1997, the members of the Federal
9 Commission, including defendants BARRY BYRON MILLS and TYLER
10 DAVIS BINGHAM, named Eugene Bentley to the Federal Council.

11 24) In or about 1997, the members of the Federal
12 Commission, including defendants BARRY BYRON MILLS and TYLER
13 DAVIS BINGHAM, formed departments within the federal faction of
14 the Aryan Brotherhood, including a security department, a drug
15 department, a gambling department, and a business department.

16 25) In or about 1997, the members of the Federal
17 Commission, including defendants BARRY BYRON MILLS and TYLER
18 DAVIS BINGHAM, placed defendant STEVE LOREN SCOTT in charge of
19 the Business Department.

20 26) In or about 1997, the members of the Federal
21 Commission, including defendants BARRY BYRON MILLS and TYLER
22 DAVIS BINGHAM, placed defendant CHRISTOPHER OVERTON GIBSON in
23 charge of the Security Department.

24 27) In or about 1997, defendant BARRY BYRON MILLS
25 sponsored Ronald Yandell for membership in the Aryan Brotherhood.

26 28) In or about January 1997, defendant GLENN RICHARD
27 FILKINS sponsored Richard Bernard for membership in the Aryan
28 Brotherhood.

1 29) In or about February 1997, defendant BARRY BYRON
2 MILLS sponsored Jonathan McGinley for membership in the Aryan
3 Brotherhood.

4 30) In or about March 1997, defendant DAVID MICHAEL
5 SAHAKIAN sponsored Michael Wagner for membership in the Aryan
6 Brotherhood.

7 31) In or about September 1997, defendants JOHN
8 STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and HENRY MICHAEL
9 HOUSTON became members of the Aryan Brotherhood as a reward for
10 participating in the murder of black inmates at the United States
11 Penitentiary at Lewisburg, Pennsylvania.

12 32) On or about September 2, 1997, defendant TYLER
13 DAVIS BINGHAM possessed a list of members of the federal faction
14 of the Aryan Brotherhood.

15 33) On or about December 25, 1997, defendant STEVE
16 LOREN SCOTT sent a message to Lawrence Klaker informing Klaker of
17 recent promotions to the Federal Council and of new members of
18 the Aryan Brotherhood.

19 34) In or about 1998, the members of the Federal
20 Commission, including defendants BARRY BYRON MILLS and TYLER
21 DAVIS BINGHAM, named defendant STEVE LOREN SCOTT to the Federal
22 Council.

23 35) In or about 1999, the members of the Federal
24 Commission, including defendants BARRY BYRON MILLS and TYLER
25 DAVIS BINGHAM, abolished the Security Department of the federal
26 faction of the Aryan Brotherhood.

27 36) On or about March 2, 1999, Aryan Brotherhood
28 member Gregory Storey possessed an Aryan Brotherhood oath.

1 37) In or about May 1999, defendant DAVID MICHAEL
2 SAHAKIAN sponsored defendant RICHARD SCOTT McINTOSH for
3 membership in the Aryan Brotherhood as a reward for murdering a
4 black inmate.

5 38) In or before July 1999, defendant MICHAEL BRUCE
6 SHEPHERD and Steven Olivares sponsored James Magee for membership
7 in the Aryan Brotherhood.

8 39) In or about July 1999, defendants JOHN WILLIAM
9 STINSON and RICHARD LLOYD TERFLINGER approved the Aryan
10 Brotherhood membership of James Magee.

11 40) In or about August 2000, the members of the
12 California Commission, including defendants JOHN WILLIAM STINSON,
13 RICHARD LLOYD TERFLINGER, and DAVID ALLEN CHANCE, decreased the
14 number of members of the California Commission from six to three.

15 41) In or about August 2000, the California
16 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
17 LLOYD TERFLINGER, and DAVID ALLEN CHANCE, re-formed the
18 California Council, changing the number of members from four to
19 six.

20 42) In or about August 2000, the California
21 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
22 LLOYD TERFLINGER, and DAVID ALLEN CHANCE, named defendant RONALD
23 BOYD SLOCUM, Marvin Stanton, James Pendleton, Dann Troxell, Dale
24 Bretches, and Philip Fortman to the California Council.

25 43) On or about January 30, 2001, defendant GLENN
26 RICHARD FILKINS possessed an Aryan Brotherhood oath.

27 44) On or about January 30, 2001, defendant GLENN
28 RICHARD FILKINS possessed photographs of enemies of the Aryan

1 | Brotherhood who were to be killed.

2 45) On or about July 25, 2002, defendant DAVID ALLEN
3 CHANCE possessed a list of Aryan Brotherhood members and of
4 enemies of the Aryan Brotherhood who were to be killed.

Murder of John Marzloff

6 46) In or before May 1979, Aryan Brotherhood member
7 Thomas Silverstein asked defendant BARRY BYRON MILLS to have John
8 Marzloff murdered because Marzloff had cheated Silverstein in a
9 narcotics transaction.

10 47) On or about May 19, 1979, defendant BARRY BYRON
11 MILLS asked Ernest Danny Holliday if he would be willing to lure
12 John Marzloff to a secluded spot within the United States
13 Penitentiary at Atlanta, Georgia.

14 48) On or about May 20, 1979, defendant BARRY BYRON
15 MILLS asked John Marzloff to go to the recreation shack of the
16 United States Penitentiary at Atlanta, Georgia, so that Ernest
17 Danny Holliday could tattoo a design on Marzloff's body.

18 49) On or about May 20, 1979, defendant BARRY BYRON
19 MILLS and Ernest Danny Holliday met with John Marzloff at the
20 recreation shack of the United States Penitentiary at Atlanta,
21 Georgia, using the ruse that Holliday was going to tattoo a
22 design on Marzloff's body.

23 50) On or about May 20, 1979, defendant BARRY BYRON
24 MILLS murdered John Marzloff by stabbing him to death.

Murder of Robert Hogan

26 51) In or before June 1980, defendant BARRY BYRON
27 MILLS told Aryan Brotherhood member George Harp that he had
28 decided to order that Robert Hogan be murdered.

1 52) Before June 8, 1980, George Harp told Aryan
2 Brotherhood associate Everett Van Burkett that defendant BARRY
3 BYRON MILLS wanted Robert Hogan murdered.

4 53) On or about June 8, 1980, Everett Van Burkett
5 murdered Robert Hogan by stabbing him to death.

6 Murder of Richard Barnes

7 54) In or about February 1982, in the Central District
8 of California, the members of the California Council, including
9 defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, ROBERT
10 LEE GRIFFIN, and RONALD BOYD SLOCUM, enacted an Aryan Brotherhood
11 rule that if a member of the Aryan Brotherhood became a witness
12 against the Aryan Brotherhood, a member of the witness' family
13 would be killed.

14 55) In or about February 1982, in the Central District
15 of California, the members of the California Council, including
16 defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, ROBERT
17 LEE GRIFFIN, and RONALD BOYD SLOCUM, decided to have a family
18 member of Aryan Brotherhood member Steven Barnes murdered because
19 Barnes had testified against a member of the Aryan Brotherhood.

20 56) In or before February 1983, in the Central
21 District of California, the members of the California Council,
22 including defendants JOHN WILLIAM STINSON, RICHARD LLOYD
23 TERFLINGER, ROBERT LEE GRIFFIN, and RONALD BOYD SLOCUM, decided
24 that defendant ROBERT LEE GRIFFIN would make arrangements to
25 carry out the murder contract on a member of Steven Barnes'
26 family.

27 57) In or before February 1983, in the Central
28 District of California, the members of the California Council,

1 including defendants JOHN WILLIAM STINSON, RICHARD LLOYD
2 TERFLINGER, ROBERT LEE GRIFFIN, and RONALD BOYD SLOCUM, decided
3 that Aryan Brotherhood member Curtis Price would be given the
4 opportunity to murder a member of Steven Barnes' family.

5 58) In or before February 1983, in the Central
6 District of California, defendant ROBERT LEE GRIFFIN asked Curtis
7 Price to murder a member of Steven Barnes' family.

8 59) In or before February 1983, in the Central
9 District of California, Curtis Price agreed to murder a member of
10 Steven Barnes' family.

11 60) In or before February 1983, in the Central
12 District of California, defendant ROBERT LEE GRIFFIN arranged to
13 have firearms supplied to Curtis Price for use in murdering a
14 member of Steven Barnes' family.

15 61) In or before February 1983, in the Central
16 District of California, defendant JOHN WILLIAM STINSON provided
17 defendant ROBERT LEE GRIFFIN with the address of Richard Barnes,
18 Steven Barnes' father.

19 62) In or before February 1983, in the Central
20 District of California, defendant ROBERT LEE GRIFFIN gave Richard
21 Barnes' address to Curtis Price.

22 63) On or about February 13, 1983, in the Central
23 District of California, Curtis Price murdered Richard Barnes by
24 shooting him in the head.

Murder of Thomas Lamb

26 64) In or about February 1982, in the Central District
27 of California, the members of the California Council, including
28 defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, ROBERT

1 LEE GRIFFIN, and RONALD BOYD SLOCUM, decided to order that Aryan
2 Brotherhood member Thomas Lamb be murdered for failure to carry
3 out an order to commit a murder.

4 65) On or about July 12, 1982, in the Central District
5 of California and elsewhere, defendants JOHN WILLIAM STINSON and
6 ROBERT LEE GRIFFIN sent a message to another member of the
7 California Council saying that there was a plan in place to
8 murder Thomas Lamb.

9 66) In or about October 1988, defendant BARRY BYRON
10 MILLS ordered defendant CLEO ROY to murder Thomas Lamb.

11 67) On or about October 15, 1988, defendant CLEO ROY
12 choked Thomas Lamb to death while defendant JOHN STANLEY
13 CAMPBELL, JR., held Thomas Lamb's legs.

14 68) On or about October 15, 1988, defendants CLEO ROY
15 and JOHN STANLEY CAMPBELL, JR., placed a noose around Thomas
16 Lamb's neck and hung him from shelves in his prison cell to make
17 it appear that he had committed suicide.

18 Murder of Stephen Clark

19 69) On or before July 3, 1982, in the Central District
20 of California, defendants JOHN WILLIAM STINSON and ROBERT LEE
21 GRIFFIN, and others, decided to order that Aryan Brotherhood
22 member Stephen Clark be murdered for disrespecting high-ranking
23 Aryan Brotherhood members.

24 70) On or before July 3, 1982, in the Central District
25 of California, defendants JOHN WILLIAM STINSON and ROBERT LEE
26 GRIFFIN, and others, decided that the murder of Stephen Clark
27 would be carried out by Aryan Brotherhood member Clifford Smith.

28 71) On or about July 3, 1982, in the Central District

1 of California, defendant ROBERT LEE GRIFFIN told Clifford Smith
2 to get a knife from defendant EDWARD TYLER BURNETT to be used to
3 murder Stephen Clark.

4 72) On or about July 3, 1982, in the Central District
5 of California, defendant EDWARD TYLER BURNETT supplied Clifford
6 Smith with a knife to be used to murder Stephen Clark.

7 73) On or about July 3, 1982, in the Central District
8 of California, Clifford Smith murdered Stephen Clark by stabbing
9 him to death.

10 74) On or about July 12, 1982, in the Central District
11 of California and elsewhere, defendants JOHN WILLIAM STINSON and
12 ROBERT LEE GRIFFIN sent a message to another member of the
13 California Council explaining why Stephen Clark had been
14 murdered.

Murder of Richard Andreasen

16 75) In or before January 1983, in the Central District
17 of California, the members of the California Council, including
18 defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, and
19 ROBERT LEE GRIFFIN, ordered that Aryan Brotherhood associate
20 Richard Andreasen be murdered because Andreasen had provided
21 information to law enforcement authorities.

22 76) In or before January 1983, in the Central District
23 of California and elsewhere, defendant RONALD BOYD SLOCUM sent
24 word to the Federal Commission that Richard Andreasen was to be
25 murdered.

26 77) In or before May 1983, in the Central District of
27 California, the members of the California Council, including
28 defendants JOHN WILLIAM STINSON, RICHARD LLOYD TERFLINGER, and

1 ROBERT LEE GRIFFIN, ordered Aryan Brotherhood associate Rick Rose
2 to murder Richard Andreasen.

3 78) On or about May 24, 1983, in the Central District
4 of California, Rick Rose attempted to murder Richard Andreasen by
5 stabbing him.

6 79) In or before October 1983, defendant BARRY BYRON
7 MILLS ordered Aryan Brotherhood member John Greschner to murder
8 Richard Andreasen.

9 80) On or about October 6, 1983, John Greschner and
10 Aryan Brotherhood associate Ronnie Joe Chriswell murdered Richard
11 Andreasen by stabbing him to death.

12 Attempted Murder of Jeffrey Barnett

13 81) In or before June 1983, in the Central District of
14 California, defendant ROBERT LEE GRIFFIN ordered that Jeffrey
15 Barnett be murdered because Barnett's wife had refused to smuggle
16 narcotics into prison.

17 82) On or about June 19, 1983, Aryan Brotherhood
18 associate Richard Woerner attempted to murder Jeffrey Barnett by
19 stabbing him.

20 83) In or before March 1990, in the Central District
21 of California and elsewhere, defendant RONALD BOYD SLOCUM
22 informed defendant BARRY BYRON MILLS that the California
23 Commission wanted Jeffrey Barnett murdered.

24 84) In or before March 1990, in the Central District
25 of California and elsewhere, defendant BARRY BYRON MILLS ordered
26 defendant RONALD BOYD SLOCUM to have defendants STEVEN WILLIAM
27 HICKLIN and CHRISTOPHER OVERTON GIBSON murder Jeffrey Barnett.

28 85) In or before March 1990, in the Central District

1 of California, defendant RONALD BOYD SLOCUM ordered defendants
2 STEVEN WILLIAM HICKLIN and CHRISTOPHER OVERTON GIBSON to murder
3 Jeffrey Barnett.

4 86) On or about March 13, 1990, in the Central
5 District of California, defendant CHRISTOPHER OVERTON GIBSON held
6 Jeffrey Barnett while defendant STEVEN WILLIAM HICKLIN repeatedly
7 stabbed Barnett, all in an effort to murder Barnett.

8 Murder of Gregory Keefer

9 87) In or before September 1983, defendant BARRY BYRON
10 MILLS ordered Aryan Brotherhood member William McKinney to murder
11 Gregory Keefer because Keefer had given a knife belonging to the
12 Aryan Brotherhood to the Mexican Mafia prison gang.

13 88) On or about September 16, 1983, William McKinney
14 asked Stanley Pearson to assist him in murdering Gregory Keefer.

15 89) On or about September 19, 1983, defendant BARRY
16 BYRON MILLS told Stanley Pearson that the murder of Gregory
17 Keefer had been authorized by the Aryan Brotherhood.

18 90) On or about September 19, 1983, defendant BARRY
19 BYRON MILLS told Stanley Pearson to help William McKinney murder
20 Gregory Keefer.

21 91) On or about September 23, 1983, William McKinney,
22 assisted by Stanley Pearson and Robert Martin, murdered Gregory
23 Keefer by stabbing him to death.

24 Attempted Murder of Jimmy Lee Inman

25 92) In or about 1984, in the Central District of
26 California and elsewhere, the members of the California
27 Commission, including defendant ROBERT LEE GRIFFIN, ordered that
28 Jimmy Lee Inman be murdered for having assaulted an Aryan

1 Brotherhood member.

2 93) In or about 1990, in the Central District of
3 California, defendant EDWARD TYLER BURNETT told Aryan Brotherhood
4 member Brian Healy that Healy was to murder Jimmy Lee Inman if
5 given the opportunity.

6 94) In or before April 1991, in the Central District
7 of California and elsewhere, the members of the California
8 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
9 LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, ordered defendant DAVID
10 MICHAEL SAHAKIAN to deliver a message to the federal faction of
11 the Aryan Brotherhood requesting that Jimmy Lee Inman be
12 murdered.

13 95) In or about May 1991, defendant DAVID MICHAEL
14 SAHAKIAN delivered the message to the federal faction of the
15 Aryan Brotherhood that the California Commission wanted Jimmy Lee
16 Inman murdered.

17 96) In or before September 1991, in the Central
18 District of California and elsewhere, the members of the
19 California Commission, including defendants JOHN WILLIAM STINSON,
20 RICHARD LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, sent word to
21 defendant RONALD BOYD SLOCUM that the California Commission had
22 requested that Jimmy Lee Inman be murdered.

23 97) In or before September 1991, in the Central
24 District of California and elsewhere, defendant RONALD BOYD
25 SLOCUM informed defendant BARRY BYRON MILLS that the California
26 Commission had requested that Jimmy Lee Inman be murdered.

27 98) In or about February 1992, defendant EDGAR WESLEY
28 HEVLE ordered Aryan Brotherhood member Lawrence Klaker to murder

1 Jimmy Lee Inman if given the opportunity.

2 99) In or before September 1993, defendant BARRY BYRON
3 MILLS ordered Aryan Brotherhood member Kurt King to murder Jimmy
4 Lee Inman.

5 100) On or about September 30, 1993, Kurt King
6 attempted to murder Jimmy Lee Inman by stabbing him.

7 Attempted Murder of Joel Burkett

8 101) In or about 1986, the members of the California
9 Commission, including defendant ROBERT LEE GRIFFIN, ordered that
10 Joel Burkett be murdered for giving information to prison
11 authorities about the location of weapons hidden at Folsom State
12 Prison in Represa, California.

13 102) In or about 1990, in the Central District of
14 California, defendant EDWARD TYLER BURNETT told Aryan Brotherhood
15 member Brian Healy that Healy was to murder Joel Burkett if given
16 the opportunity.

17 103) In or before April 1991, in the Central District
18 of California and elsewhere, the members of the California
19 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
20 LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, ordered defendant DAVID
21 MICHAEL SAHAKIAN to deliver a message to the federal faction of
22 the Aryan Brotherhood requesting that Joel Burkett be murdered.

23 104) In or about May 1991, defendant DAVID MICHAEL
24 SAHAKIAN delivered the message to the federal faction of the
25 Aryan Brotherhood that the California Commission wanted Joel
26 Burkett murdered.

27 105) In or before July 1991, in the Central District of
28 California and elsewhere, the members of the California

1 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
2 LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, sent word to defendant
3 RONALD BOYD SLOCUM that Joel Burkett was to be murdered.

4 106) In or before July 1991, in the Central District of
5 California and elsewhere, defendant RONALD BOYD SLOCUM informed
6 defendant BARRY BYRON MILLS that the California Commission had
7 requested that Joel Burkett be murdered.

8 107) In or before December 1991, defendant BARRY BYRON
9 MILLS told Aryan Brotherhood member John Greschner to tell Aryan
10 Brotherhood member Lawrence Klaker to murder Joel Burkett if
11 given the opportunity.

12 108) In or about December 1991, John Greschner told
13 Lawrence Klaker that defendant BARRY BYRON MILLS had ordered
14 Klaker to murder Joel Burkett if given the opportunity.

15 109) In or about February 1992, defendant EDGAR WESLEY
16 HEVLE ordered Lawrence Klaker to murder Joel Burkett if given the
17 opportunity.

18 110) On or about March 1, 1992, Lawrence Klaker
19 attempted to murder Joel Burkett by stabbing him.

20 Conspiracy to Distribute Narcotics at Los Angeles County Jail

21 111) From 1988 to 1990, in the Central District of
22 California, defendant JOHN WILLIAM STINSON sold heroin to Aryan
23 Brotherhood associate Michael Birman at Los Angeles County Jail
24 on multiple occasions.

25 112) From 1988 to 1990, in the Central District of
26 California, on multiple occasions, defendant DEBRA LEE STINSON
27 received payment from Michael Birman for the sale of heroin at
28 Los Angeles County Jail.

1 113) Between 1988 and 1990, in the Central District of
2 California, defendant JOHN WILLIAM STINSON asked Michael Birman
3 to smuggle heroin into Los Angeles County Jail.

4 114) Between April 1, 1988, and May 31, 1988, in the
5 Central District of California, defendant DEBRA LEE STINSON
6 received a money order for \$400.

7 115) Between April 1, 1988, and November 23, 1988, in
8 the Central District of California, defendant DEBRA LEE STINSON
9 arranged a three-way telephone call between defendant JOHN
10 WILLIAM STINSON and Steven Broughton, who were both inmates at
11 Los Angeles County Jail.

12 116) In or about December 1988, in the Central District
13 of California, defendant DEBRA LEE STINSON purchased heroin.

14 117) In or about December 1988, in the Central District
15 of California, defendant DEBRA LEE STINSON delivered heroin to
16 another person.

17 118) On or about November 2, 1989, in the Central
18 District of California, defendant DEBRA LEE STINSON rented a
19 mailbox at 12860 Beach Boulevard, # G-415, in Stanton,
20 California.

21 119) In or about 1990, in the Central District of
22 California, Michael Birman attempted to have his attorney smuggle
23 drugs into Los Angeles County Jail by hiding the drugs in a pair
24 of tennis shoes that were to be brought into the jail.

25 120) In or about 1990, in the Central District of
26 California, after drugs hidden in tennis shoes were found by a
27 secretary at the office of Michael Birman's attorney, defendant
28 JOHN WILLIAM STINSON told defendant DEBRA LEE STINSON to retrieve

1 the tennis shoes containing drugs from the attorney's office.

2 121) In or about 1990, in the Central District of
3 California, defendant DEBRA LEE STINSON retrieved tennis shoes
4 containing drugs from the office of Michael Birman's attorney.

5 122) On or about August 15, 1990, in the Central
6 District of California, defendant JOHN WILLIAM STINSON, while an
7 inmate at Los Angeles County Jail, sent a note to Russell Graham
8 offering to supply Graham with heroin to be sold in jail in
9 exchange for \$500.

10 123) On or about August 20, 1990, in the Central
11 District of California, defendant DEBRA LEE STINSON picked up a
12 \$500 money order from the mailbox at 12860 Beach Boulevard, # G-
13 415, in Stanton, California.

14 124) On or about August 21, 1990, in the Central
15 District of California, defendant DEBRA LEE STINSON cashed the
16 \$500 money order she had picked up.

17 125) On or about August 21, 1990, in the Central
18 District of California, defendant DEBRA LEE STINSON visited
19 defendant JOHN WILLIAM STINSON in the Los Angeles County Jail.

20 126) On or about August 22, 1990, in the Central
21 District of California, defendant JOHN WILLIAM STINSON told
22 Russell Graham that he had received \$500 that Graham had sent to
23 defendant DEBRA LEE STINSON and that he would supply Graham with
24 heroin on August 24, 1990.

Murder of Arva Lee Ray

26 127) In or before August 1989, in the Central District
27 of California, defendants GLENN RICHARD FILKINS and EDGAR WESLEY
28 HEVLE, and others, agreed among themselves to seek permission

1 from the Federal Commission to murder Aryan Brotherhood member
2 Arva Lee Ray for failure to follow the rules of the Aryan
3 Brotherhood.

4 128) In or before August 1989, the members of the
5 Federal Commission, including defendants BARRY BYRON MILLS and
6 TYLER DAVIS BINGHAM, authorized the murder of Arva Lee Ray.

7 129) In or about August 1989, in the Central District
8 of California and elsewhere, defendants BARRY BYRON MILLS and
9 TYLER DAVIS BINGHAM informed defendant RONALD BOYD SLOCUM that
10 they had authorized the murder of Arva Lee Ray.

11 130) In or about August 1989, in the Central District
12 of California, defendant RONALD BOYD SLOCUM informed a member of
13 the conspiracy who was incarcerated with Arva Lee Ray that the
14 Federal Commission had authorized Ray's murder.

15 131) In or about August 1989, in the Central District
16 of California, defendants GLENN RICHARD FILKINS and EDGAR WESLEY
17 HEVLE, and others, decided that defendant GLENN RICHARD FILKINS
18 would murder Arva Lee Ray.

19 132) On or about August 9, 1989, in the Central
20 District of California, defendant GLENN RICHARD FILKINS asked
21 Aryan Brotherhood associate Thomas Miller to help him murder Arva
22 Lee Ray.

23 133) On or about August 9, 1989, in the Central
24 District of California, defendant GLENN RICHARD FILKINS attempted
25 to murder Arva Lee Ray by giving him an overdose of heroin.

26 134) On or about August 9, 1989, in the Central
27 District of California, defendant GLENN RICHARD FILKINS murdered
28 Arva Lee Ray by strangling him.

1 Murder of Arthur Ruffo

2 135) In or before 1990, in the Central District of
3 California and elsewhere, the members of the California
4 Commission, including defendants JOHN WILLIAM STINSON, RICHARD
5 LLOYD TERFLINGER, and ROBERT LEE GRIFFIN, decided that Aryan
6 Brotherhood member Arthur Ruffo was to be murdered.

7 136) In or about 1990, in the Central District of
8 California, defendant EDWARD TYLER BURNETT told Aryan Brotherhood
9 member Brian Healy that the California Commission had ordered
10 that Arthur Ruffo be murdered.

11 137) In or about August 1995, defendants JOHN WILLIAM
12 STINSON, RICHARD LLOYD TERFLINGER, and DAVID ALLEN CHANCE ordered
13 Brian Healy to murder Arthur Ruffo.

14 138) On or about February 5, 1996, defendant RICHARD
15 LLOYD TERFLINGER sent a message to Brian Healy ordering him to
16 murder Arthur Ruffo.

17 139) On or about February 7, 1996, Brian Healy murdered
18 Arthur Ruffo by strangling him to death.

19 140) In or about November 1997, defendant ROBERT LEE
20 GRIFFIN told Brian Healy that he was among those who ordered that
21 Arthur Ruffo be murdered.

22 Conspiracy to Murder Frank Ruopoli

23 141) In or before June 1991, in the Central District of
24 California and elsewhere, members of the California faction of
25 the Aryan Brotherhood asked defendant RONALD BOYD SLOCUM to
26 transmit a message to the federal faction of the Aryan
27 Brotherhood saying that Frank Ruopoli was to be murdered for
28 having provided information about defendant JOHN WILLIAM STINSON

1 to law enforcement authorities.

2 142) In or before June 1991, in the Central District of
3 California and elsewhere, defendant RONALD BOYD SLOCUM sent a
4 message to defendant BARRY BYRON MILLS saying that Frank Ruopoli
5 was to be murdered.

6 143) In or about June 1991, defendant BARRY BYRON MILLS
7 told Aryan Brotherhood member Kevin Roach to contact members of
8 the federal faction of the Aryan Brotherhood and tell them to try
9 to locate Frank Ruopoli so that Ruopoli could be murdered.

10 144) In or about 1995, defendant BARRY BYRON MILLS told
11 Aryan Brotherhood member Eugene Bentley that the California
12 Commission wanted Frank Ruopoli murdered.

13 145) In or about April 1995, Arthur Ruffo told Aryan
14 Brotherhood member Brian Healy that Frank Ruopoli was to be
15 murdered because he had testified in court against defendant JOHN
16 WILLIAM STINSON.

17 146) In or about June 1998, Aryan Brotherhood member
18 Frederick Frakes gave Kevin Roach a telephone number to be used
19 in tracking down Frank Ruopoli.

20 Conspiracy to Distribute Narcotics at USP Leavenworth

21 147) From 1992 to 1993, on multiple occasions,
22 defendant MARK ALAN NYQUIST arranged to have Aryan Brotherhood
23 associate Dewey Lee smuggle narcotics into the United States
24 Penitentiary at Leavenworth, Kansas.

25 148) From 1992 to 1993, on multiple occasions,
26 defendant RONALD BOYD SLOCUM provided heroin to Mary Bentley to
27 be smuggled into the United States Penitentiary at Leavenworth,
28 Kansas.

1 149) From 1992 to 1993, on multiple occasions, Mary
2 Bentley smuggled heroin into the United States Penitentiary at
3 Leavenworth, Kansas.

4 150) On or about August 22, 1992, in the Central
5 District of California and elsewhere, defendant RONALD BOYD
6 SLOCUM spoke on the telephone with Mary Bentley in order to
7 arrange a narcotics transaction in which the narcotics would
8 eventually be smuggled into the United States Penitentiary at
9 Leavenworth, Kansas.

10 151) On or about August 24, 1992, in the Central
11 District of California and elsewhere, defendant RONALD BOYD
12 SLOCUM spoke on the telephone with Mary Bentley in order to
13 arrange a narcotics transaction in which the narcotics would
14 eventually be smuggled into the United States Penitentiary at
15 Leavenworth, Kansas.

16 152) On or about August 25, 1992, in the Central
17 District of California and elsewhere, defendant RONALD BOYD
18 SLOCUM spoke on the telephone with Mary Bentley in order to
19 arrange a narcotics transaction in which the narcotics would
20 eventually be smuggled into the United States Penitentiary at
21 Leavenworth, Kansas.

22 153) On or about October 4, 1992, in the Central
23 District of California and elsewhere, defendant RONALD BOYD
24 SLOCUM spoke on the telephone with Mary Bentley in order to
25 arrange a narcotics transaction in which the narcotics would
26 eventually be smuggled into the United States Penitentiary at
27 Leavenworth, Kansas.

28 154) On or about October 6, 1992, in the Central

1 District of California and elsewhere, defendant RONALD BOYD
2 SLOCUM spoke on the telephone with Mary Bentley in order to
3 arrange a narcotics transaction in which the narcotics would
4 eventually be smuggled into the United States Penitentiary at
5 Leavenworth, Kansas.

6 155) On or about November 12, 1992, in the Central
7 District of California and elsewhere, defendant RONALD BOYD
8 SLOCUM spoke on the telephone with Mary Bentley in order to
9 arrange a narcotics transaction in which the narcotics would
10 eventually be smuggled into the United States Penitentiary at
11 Leavenworth, Kansas.

12 156) On or about November 13, 1992, in the Central
13 District of California and elsewhere, defendant RONALD BOYD
14 SLOCUM spoke on the telephone with Mary Bentley in order to
15 arrange a narcotics transaction in which the narcotics would
16 eventually be smuggled into the United States Penitentiary at
17 Leavenworth, Kansas.

18 157) On or about January 1, 1993, in the Central
19 District of California and elsewhere, defendant RONALD BOYD
20 SLOCUM spoke on the telephone with Mary Bentley in order to
21 arrange a narcotics transaction in which the narcotics would
22 eventually be smuggled into the United States Penitentiary at
23 Leavenworth, Kansas.

24 158) On or about January 9, 1993, in the Central
25 District of California and elsewhere, defendant RONALD BOYD
26 SLOCUM spoke on the telephone with Mary Bentley in order to
27 arrange a narcotics transaction in which the narcotics would
28 eventually be smuggled into the United States Penitentiary at

1 Leavenworth, Kansas.

2 159) On or about January 20, 1993, in the Central
3 District of California and elsewhere, defendant RONALD BOYD
4 SLOCUM spoke on the telephone with Mary Bentley in order to
5 arrange a narcotics transaction in which the narcotics would
6 eventually be smuggled into the United States Penitentiary at
7 Leavenworth, Kansas.

8 160) In or about February 1993, defendant MARK ALAN
9 NYQUIST took command of heroin trafficking by Aryan Brotherhood
10 members and associates at the United States Penitentiary at
11 Leavenworth, Kansas.

12 161) On or about May 3, 1993, in the Central District
13 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
14 on the telephone with Mary Bentley in order to arrange a
15 narcotics transaction in which the narcotics would eventually be
16 smuggled into the United States Penitentiary at Leavenworth,
17 Kansas.

18 162) On or about May 17, 1993, in the Central District
19 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
20 on the telephone with Mary Bentley in order to arrange a
21 narcotics transaction in which the narcotics would eventually be
22 smuggled into the United States Penitentiary at Leavenworth,
23 Kansas.

24 163) On or about July 3, 1993, in the Central District
25 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
26 on the telephone with Mary Bentley in order to arrange a
27 narcotics transaction in which the narcotics would eventually be
28 smuggled into the United States Penitentiary at Leavenworth,

1 Kansas.

2 164) On or about July 14, 1993, in the Central District
3 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
4 on the telephone with Mary Bentley in order to arrange a
5 narcotics transaction in which the narcotics would eventually be
6 smuggled into the United States Penitentiary at Leavenworth,
7 Kansas.

8 165) On or about July 29, 1993, in the Central District
9 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
10 on the telephone with Mary Bentley in order to arrange a
11 narcotics transaction in which the narcotics would eventually be
12 smuggled into the United States Penitentiary at Leavenworth,
13 Kansas.

14 166) On or about August 17, 1993, in the Central
15 District of California and elsewhere, defendant RONALD BOYD
16 SLOCUM spoke on the telephone with Mary Bentley in order to
17 arrange a narcotics transaction in which the narcotics would
18 eventually be smuggled into the United States Penitentiary at
19 Leavenworth, Kansas.

20 167) On or about August 20, 1993, in the Central
21 District of California and elsewhere, defendant RONALD BOYD
22 SLOCUM spoke on the telephone with Mary Bentley in order to
23 arrange a narcotics transaction in which the narcotics would
24 eventually be smuggled into the United States Penitentiary at
25 Leavenworth, Kansas.

26 168) On or about September 10, 1993, in the Central
27 District of California and elsewhere, defendant RONALD BOYD
28 SLOCUM spoke on the telephone with Mary Bentley in order to

1 arrange a narcotics transaction in which the narcotics would
2 eventually be smuggled into the United States Penitentiary at
3 Leavenworth, Kansas.

4 169) On or about October 18, 1993, in the Central
5 District of California and elsewhere, defendant RONALD BOYD
6 SLOCUM spoke on the telephone with Mary Bentley in order to
7 arrange a narcotics transaction in which the narcotics would
8 eventually be smuggled into the United States Penitentiary at
9 Leavenworth, Kansas.

10 170) On or about October 24, 1993, in the Central
11 District of California and elsewhere, defendant RONALD BOYD
12 SLOCUM spoke on the telephone with Mary Bentley in order to
13 arrange a narcotics transaction in which the narcotics would
14 eventually be smuggled into the United States Penitentiary at
15 Leavenworth, Kansas.

16 171) On or about December 28, 1993, in the Central
17 District of California and elsewhere, defendant RONALD BOYD
18 SLOCUM spoke on the telephone with Mary Bentley in order to
19 arrange a narcotics transaction in which the narcotics would
20 eventually be smuggled into the United States Penitentiary at
21 Leavenworth, Kansas.

22 172) On or about February 12, 1994, in the Central
23 District of California and elsewhere, defendant RONALD BOYD
24 SLOCUM spoke on the telephone with Mary Bentley in order to
25 arrange a narcotics transaction in which the narcotics would
26 eventually be smuggled into the United States Penitentiary at
27 Leavenworth, Kansas.

28 173) On or about June 3, 1994, in the Central District

1 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
2 on the telephone with Mary Bentley in order to arrange a
3 narcotics transaction in which the narcotics would eventually be
4 smuggled into the United States Penitentiary at Leavenworth,
5 Kansas.

6 174) From October 1994 to September 1995, on multiple
7 occasions, defendant MICHAEL PATRICK McELHINEY ordered Aryan
8 Brotherhood associate Allan Hawley to distribute heroin within
9 the United States Penitentiary at Leavenworth, Kansas.

10 175) On or about October 4, 1994, in the Central
11 District of California and elsewhere, defendant RONALD BOYD
12 SLOCUM spoke on the telephone with Mary Bentley in order to
13 arrange a narcotics transaction in which the narcotics would
14 eventually be smuggled into the United States Penitentiary at
15 Leavenworth, Kansas.

16 176) In or about November 1994, defendant MICHAEL
17 PATRICK McELHINEY gave Aryan Brotherhood associate Danny
18 McPheeters a quarter of a gram of heroin to use to pay the winner
19 of a poker game.

20 177) In or about December 1994, defendant MICHAEL
21 PATRICK McELHINEY ordered Danny McPheeters to find inmates to
22 smuggle narcotics into the United States Penitentiary at
23 Leavenworth, Kansas.

24 178) On or about February 1, 1995, in the Central
25 District of California and elsewhere, defendant RONALD BOYD
26 SLOCUM spoke on the telephone with Mary Bentley in order to
27 arrange a narcotics transaction in which the narcotics would
28 eventually be smuggled into the United States Penitentiary at

1 Leavenworth, Kansas.

2 179) On or about February 17, 1995, in the Central
3 District of California and elsewhere, defendant RONALD BOYD
4 SLOCUM spoke on the telephone with Mary Bentley in order to
5 arrange a narcotics transaction in which the narcotics would
6 eventually be smuggled into the United States Penitentiary at
7 Leavenworth, Kansas.

8 180) In or about March 1995, defendant MICHAEL PATRICK
9 McELHINEY asked Walter Moles to smuggle heroin into the United
10 States Penitentiary at Leavenworth, Kansas.

11 181) On or about March 22, 1995, Mary Anne Bevaret
12 brought heroin to Gregory Storey in the visiting room at the
13 United States Penitentiary at Leavenworth, Kansas.

14 182) On or about March 22, 1995, Gregory Storey
15 swallowed the heroin that Mary Anne Bevaret had brought to him at
16 the United States Penitentiary at Leavenworth, Kansas.

17 183) On or about March 22, 1995, Gregory Storey
18 smuggled the heroin he had swallowed from the visiting room to
19 the interior of the United States Penitentiary at Leavenworth,
20 Kansas.

21 184) On or about March 24, 1995, defendant MICHAEL
22 PATRICK McELHINEY provided Aryan Brotherhood associate Charles
23 Leger with heroin and ordered Leger to package the heroin so that
24 it could be sold to inmates.

25 185) In or about May 1995, defendants MICHAEL PATRICK
26 McELHINEY and DAVID MICHAEL SAHAKIAN asked Charles Moorman to
27 have money sent to a heroin smuggler as advance payment for
28 smuggling heroin into the United States Penitentiary at

1 Leavenworth, Kansas.

2 186) On or about May 7, 1995, in the Central District
3 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
4 on the telephone with Mary Bentley in order to arrange a
5 narcotics transaction in which the narcotics would eventually be
6 smuggled into the United States Penitentiary at Leavenworth,
7 Kansas.

8 187) In or about June 1995, defendant MICHAEL PATRICK
9 McELHINEY packaged heroin that had been smuggled into the United
10 States Penitentiary at Leavenworth, Kansas.

11 188) On or about June 26, 1995, defendant MARK ALAN
12 NYQUIST recruited Walter Moles to smuggle narcotics into the
13 United States Penitentiary at Leavenworth, Kansas.

14 189) In or about July 1995, defendants MICHAEL PATRICK
15 McELHINEY and DAVID MICHAEL SAHAKIAN took command of heroin
16 trafficking by Aryan Brotherhood members and associates at the
17 United States Penitentiary at Leavenworth, Kansas.

18 190) In or about July 1995, defendant MICHAEL PATRICK
19 McELHINEY arranged to have heroin sent to the home of Walter
20 Moles' father.

21 191) On or about July 21, 1995, Walter Moles' father
22 brought the heroin he had received to the visiting room at the
23 United States Penitentiary at Leavenworth, Kansas, and gave the
24 heroin to Walter Moles.

25 192) On or about July 21, 1995, Walter Moles
26 transported the heroin he had received from his father from the
27 visiting room at the United States Penitentiary at Leavenworth,
28 Kansas, to the interior of the prison.

1 193) On or about July 21, 1995, Walter Moles gave the
2 heroin that he had brought into the United States Penitentiary at
3 Leavenworth, Kansas, to Aryan Brotherhood associate Michael Hunt.

4 194) On or about July 24, 1995, Michael Hunt gave the
5 heroin that Walter Moles had brought into the United States
6 Penitentiary at Leavenworth, Kansas, to defendant MICHAEL PATRICK
7 McELHINEY.

8 195) On or about July 25, 1995, defendant MICHAEL
9 PATRICK McELHINEY gave approximately a quarter of a gram of
10 heroin to Aryan Brotherhood associate Michael Witcher to sell to
11 another inmate.

12 196) On or about July 29, 1995, in the Central District
13 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
14 on the telephone with Mary Bentley in order to arrange a
15 narcotics transaction in which the narcotics would eventually be
16 smuggled into the United States Penitentiary at Leavenworth,
17 Kansas.

18 197) On or about August 19, 1995, Aryan Brotherhood
19 associate Steven Ritter, at the request of defendant MICHAEL
20 PATRICK McELHINEY, transported heroin to defendant DAVID MICHAEL
21 SAHAKIAN in the segregated housing unit at the United States
22 Penitentiary at Leavenworth, Kansas.

23 198) In or about September 1995, Aryan Brotherhood
24 associate James Pratt brought heroin into the segregated housing
25 unit at the United States Penitentiary at Leavenworth, Kansas, on
26 behalf of defendants MICHAEL PATRICK McELHINEY and DAVID MICHAEL
27 SAHAKIAN.

28 199) In or about September 1995, Danny McPheeters

1 brought heroin into the segregated housing unit at the United
2 States Penitentiary at Leavenworth, Kansas, on behalf of
3 defendants MICHAEL PATRICK McELHINEY and DAVID MICHAEL SAHAKIAN.

4 200) On or before September 18, 1995, defendant DAVID
5 MICHAEL SAHAKIAN sent a message to Allan Hawley instructing
6 Hawley on the procedures to be used when sending secret messages
7 to members or associates of the Aryan Brotherhood within the
8 United States Penitentiary at Leavenworth, Kansas.

9 201) On or about September 18, 1995, defendant DAVID
10 MICHAEL SAHAKIAN sent a message to Allan Hawley instructing
11 Hawley to have heroin smuggled into the segregated housing unit
12 at the United States Penitentiary at Leavenworth, Kansas.

13 202) On or before September 21, 1995, defendant MICHAEL
14 PATRICK McELHINEY sent a message to Allan Hawley complaining that
15 someone had stolen heroin belonging to defendant MICHAEL PATRICK
16 McELHINEY.

17 203) On or before September 21, 1995, defendant MICHAEL
18 PATRICK McELHINEY sent a message to Allan Hawley instructing
19 Hawley not to share heroin with inmates not associated with the
20 Aryan Brotherhood.

21 204) On or before September 21, 1995, defendant MICHAEL
22 PATRICK McELHINEY sent a message to Allan Hawley instructing
23 Hawley to send him some heroin.

24 205) In or about November 1995, defendant MICHAEL
25 PATRICK McELHINEY received heroin that had been smuggled into the
26 United States Penitentiary at Leavenworth, Kansas.

27 Attempted Murder of Ismael Benitez-Mendez

28 206) In or before January 1992, defendant TYLER DAVIS

1 BINGHAM ordered defendant STEVE LOREN SCOTT to murder Ismael
2 Benitez-Mendez because Benitez-Mendez had assaulted an Aryan
3 Brotherhood associate.

4 207) On or about January 4, 1992, defendant STEVE LOREN
5 SCOTT attempted to murder Ismael Benitez-Mendez by stabbing him.

6 Murder of William McKinney

7 208) In or before December 1992, the members of the
8 Federal Commission, including defendants BARRY BYRON MILLS and
9 TYLER DAVIS BINGHAM, authorized the murder of Aryan Brotherhood
10 member William McKinney for failure to follow the rules of the
11 Aryan Brotherhood.

12 209) In or before December 1992, in the Central
13 District of California and elsewhere, the members of the Federal
14 Commission, including defendants BARRY BYRON MILLS and TYLER
15 DAVIS BINGHAM, ordered defendant RONALD BOYD SLOCUM to inform
16 Aryan Brotherhood members at the United States Penitentiary at
17 Lompoc, California, that the Federal Commission had authorized
18 the murder of William McKinney.

19 210) In or before December 1992, in the Central
20 District of California, defendant RONALD BOYD SLOCUM informed a
21 member of the Aryan Brotherhood at the United States Penitentiary
22 at Lompoc, California, that the Federal Commission had authorized
23 the murder of William McKinney.

24 211) On or about December 28, 1992, in the Central
25 District of California, a member of the conspiracy murdered
26 William McKinney by hitting him over the head with a metal bar,
27 resulting in McKinney's death on January 8, 1993.

28

1 Attempted Murder of David Newman

2 212) In or about June 1994, members of the Aryan
3 Brotherhood ordered Richard Bernard to murder David Newman
4 because Newman had failed to follow the orders of the Aryan
5 Brotherhood.

6 213) On or about June 21, 1994, Richard Bernard
7 attempted to murder David Newman by stabbing him.

8 Conspiracy to Murder Chris Cecil

9 214) On or about June 10, 1994, defendant JOHN WILLIAM
10 STINSON ordered Aryan Brotherhood member Jeffrey Rhodes to murder
11 Aryan Brotherhood associate Chris Cecil because Cecil had failed
12 to follow an order to commit a murder on behalf of the Aryan
13 Brotherhood.

14 215) Between June 10, 1994, and June 17, 1994, Aryan
15 Brotherhood member Paul Schneider made a knife for Jeffrey Rhodes
16 to use in murdering Chris Cecil.

17 216) On or about June 17, 1994, Paul Schneider brought
18 the knife he had made, concealed inside a manila envelope, to the
19 law library at Pelican Bay State Prison in Crescent City,
20 California.

21 217) On or about June 17, 1994, Paul Schneider, in the
22 law library at Pelican Bay State Prison in Crescent City,
23 California, passed the manila envelope containing the knife he
24 had made to another inmate, who passed the manila envelope to
25 Jeffrey Rhodes.

26 218) On or about June 17, 1994, defendants JOHN WILLIAM
27 STINSON, RICHARD LLOYD TERFLINGER, and DAVID ALLEN CHANCE
28 instructed Jeffrey Rhodes on how to murder Chris Cecil and make

the murder appear to have been committed in self defense.

Murder of Charles Leger

3 219) In or about August 1995, defendant DAVID MICHAEL
4 SAHAKIAN told Aryan Brotherhood associate Allan Hawley that he
5 wanted Hawley to murder an informant at the United States
6 Penitentiary at Leavenworth, Kansas.

7 220) In or about August 1995, defendant DAVID MICHAEL
8 SAHAKIAN told Allan Hawley that he would send Hawley a knife to
9 use in murdering the informant.

10 221) In or about August 1995, defendant DAVID MICHAEL
11 SAHAKIAN sent a note to defendant MICHAEL PATRICK McELHINEY
12 saying that he wanted to have Aryan Brotherhood associate Charles
13 Lejer murdered.

222) In or about August 1995, defendant MICHAEL PATRICK
MCELHINEY selected Gregory Storey to murder Charles Leger.

16 223) In or about August 1995, defendant MICHAEL PATRICK
17 McELHINEY sent a note to defendant DAVID MICHAEL SAHAKIAN
18 agreeing that Charles Leger should be murdered.

19 224) In or about August 1995, defendant DAVID MICHAEL
20 SAHAKIAN ordered Gregory Storey to murder Charles Leger.

21 225) In or about August 1995, defendant DAVID MICHAEL
22 SAHAKIAN provided Gregory Storey with a knife to be used to
23 murder Charles Leger.

24 226) On or about August 25, 1995, Gregory Storey
25 murdered Charles Leger by stabbing him to death.

26 227) In or about 1996 and 1997, defendants MICHAEL
27 PATRICK McELHINEY and DAVID MICHAEL SAHAKIAN ordered a number of
28 other inmates to testify falsely that Gregory Storey killed

1 Charles Leger in self defense.

2 Distribution of Proceeds of Narcotics Trafficking

3 228) In or about August 1995, defendants TYLER DAVIS
4 BINGHAM, MICHAEL PATRICK McELHINEY, and DAVID MICHAEL SAHAKIAN
5 arranged to have the proceeds of narcotics trafficking sent to
6 defendant SEAN MATTHEW DARCY.

7 229) On or about August 31, 1995, defendant SEAN
8 MATTHEW DARCY mailed a money order in the amount of \$105 to Aryan
9 Brotherhood member Eugene Bentley at the Administrative Maximum
10 Facility at Florence, Colorado.

11 230) On or about August 31, 1995, defendant SEAN
12 MATTHEW DARCY mailed a money order in the amount of \$105 to
13 defendant GLENN RICHARD FILKINS at the Administrative Maximum
14 Facility at Florence, Colorado.

15 231) On or about August 31, 1995, defendant SEAN
16 MATTHEW DARCY mailed a money order in the amount of \$105 to Aryan
17 Brotherhood member Lawrence Klaker at the Administrative Maximum
18 Facility at Florence, Colorado.

19 232) On or about August 31, 1995, defendant SEAN
20 MATTHEW DARCY mailed a money order in the amount of \$105 to
21 defendant STEVEN WILLIAM HICKLIN at the Administrative Maximum
22 Facility at Florence, Colorado.

23 233) On or about August 31, 1995, defendant SEAN
24 MATTHEW DARCY mailed a money order in the amount of \$105 to Aryan
25 Brotherhood member John Greschner at the Administrative Maximum
26 Facility at Florence, Colorado.

27 234) On or about August 31, 1995, defendant SEAN
28 MATTHEW DARCY mailed a money order in the amount of \$105 to

1 defendant CHRISTOPHER OVERTON GIBSON at the Administrative
2 Maximum Facility at Florence, Colorado.

3 235) On or about August 31, 1995, defendant SEAN
4 MATTHEW DARCY mailed a money order in the amount of \$105 to
5 defendant STEVE LOREN SCOTT at the Administrative Maximum
6 Facility at Florence, Colorado.

7 236) On or about August 31, 1995, defendant SEAN
8 MATTHEW DARCY mailed a money order in the amount of \$105 to Aryan
9 Brotherhood member Kurt King at the Administrative Maximum
10 Facility at Florence, Colorado.

11 237) On or about August 31, 1995, defendant SEAN
12 MATTHEW DARCY mailed a money order in the amount of \$105 to Aryan
13 Brotherhood member Kirk Smyth at the Administrative Maximum
14 Facility at Florence, Colorado.

15 238) On or about August 31, 1995, defendant SEAN
16 MATTHEW DARCY mailed a money order in the amount of \$105 to Aryan
17 Brotherhood member Norman Matthews at the Administrative Maximum
18 Facility at Florence, Colorado.

19 239) On or about August 31, 1995, defendant SEAN
20 MATTHEW DARCY mailed a money order in the amount of \$105 to
21 defendant TYLER DAVIS BINGHAM at the Administrative Maximum
22 Facility at Florence, Colorado.

23 Conspiracy to Murder Walter Johnson

24 240) In or about July 1996, organized crime leader John
25 Gotti told defendants MICHAEL PATRICK McELHINEY and DAVID MICHAEL
26 SAHAKIAN that he would pay the Aryan Brotherhood to murder Walter
27 Johnson, who was at the time an inmate at the United States
28 Penitentiary at Marion, Illinois.

1 241) In or about August 1996, defendant MICHAEL PATRICK
2 McELHINEY told Aryan Brotherhood associate Steven Ritter that
3 Ritter was to murder Walter Johnson if given the opportunity
4 because John Gotti would pay to have Johnson murdered.

5 242) In or about September 1996, defendant MICHAEL
6 PATRICK McELHINEY told Aryan Brotherhood associate Dewey Lee that
7 Lee was to murder Walter Johnson if given the opportunity because
8 John Gotti would pay to have Johnson murdered.

9 243) In or before March 1997, defendants MICHAEL
10 PATRICK McELHINEY and DAVID MICHAEL SAHAKIAN ordered defendant
11 JESSE ANTONIO VAN METER and Aryan Brotherhood associate Michael
12 Wagner to take a message to defendant BARRY BYRON MILLS saying
13 that John Gotti had offered to pay the Aryan Brotherhood to
14 murder Walter Johnson.

15 244) In or before September 1997, defendant JESSE
16 ANTONIO VAN METER and Michael Wagner delivered the message to
17 defendant BARRY BYRON MILLS that John Gotti had offered to pay
18 the Aryan Brotherhood to murder Walter Johnson.

19 245) In or about September 1997, defendant JOSEPH
20 PRINCIPE, who was at the time a correctional officer at the
21 Administrative Maximum Facility at Florence, Colorado, arranged
22 to have defendant BARRY BYRON MILLS and Aryan Brotherhood member
23 Kevin Roach placed on recreation in the same area so that
24 defendant BARRY BYRON MILLS and Roach could communicate about
25 Aryan Brotherhood affairs.

26 246) In or about September 1997, defendant BARRY BYRON
27 MILLS told Kevin Roach that he was to notify all Aryan
28 Brotherhood members who could be contacted that Walter Johnson

1 was to be murdered at all costs.

2 247) In or about September 1997, defendant JOSEPH
3 PRINCIPE arranged to have defendant BARRY BYRON MILLS and Aryan
4 Brotherhood member Eugene Bentley placed on recreation in the
5 same area so that defendant BARRY BYRON MILLS and Bentley could
6 communicate about Aryan Brotherhood affairs.

7 248) In or about September 1997, defendant BARRY BYRON
8 MILLS told Eugene Bentley that he was to notify all Aryan
9 Brotherhood members who could be contacted that Walter Johnson
10 was to be murdered at all costs.

11 Race War with Black Inmates

12 249) In or about December 1996, defendant DAVID MICHAEL
13 SAHAKIAN ordered Aryan Brotherhood associate Michael Wagner to
14 assault a black inmate named Butch Johnson because Johnson had
15 assaulted a white inmate.

16 250) On or about December 18, 1996, Michael Wagner
17 assaulted Butch Johnson.

18 251) In or about January 1997, defendant EDGAR WESLEY
19 HEVLE sent a message to defendants MICHAEL PATRICK McELHINEY and
20 DAVID MICHAEL SAHAKIAN saying that there had been racial problems
21 at the United States Penitentiary at Lewisburg, Pennsylvania, and
22 that white inmates at the United States Penitentiary at Marion,
23 Illinois, should begin making knives in order to commit acts of
24 violence against black inmates.

25 252) In or about January 1997, defendants MICHAEL
26 PATRICK McELHINEY and DAVID MICHAEL SAHAKIAN ordered white
27 inmates at the United States Penitentiary at Marion, Illinois, to
28 murder black inmates in retaliation for assaults on white inmates

1 committed by black inmates.

2 253) In or about January 1997, defendant DAVID MICHAEL
3 SAHAKIAN made a "hit list" of black inmates at the United States
4 Penitentiary at Marion, Illinois, who were to be murdered.

5 254) In or about February 1997, defendant MICHAEL
6 PATRICK McELHINEY ordered Aryan Brotherhood associate Raymond
7 Oechsle to smuggle a knife to be used in the war on black inmates
8 from one housing unit to another at the United States
9 Penitentiary at Marion, Illinois.

10 255) In or about February 1997, defendant MICHAEL
11 PATRICK McELHINEY provided a knife to Aryan Brotherhood associate
12 Ricky Williams to be used to attempt to kill a black inmate.

13 256) On or about February 14, 1997, defendant DAVID
14 MICHAEL SAHAKIAN attempted to murder Darryl Bailey by helping two
15 inmates stab Bailey.

16 257) In or about March 1997, defendants MICHAEL PATRICK
17 McELHINEY and DAVID MICHAEL SAHAKIAN ordered defendant JESSE
18 ANTONIO VAN METER and Michael Wagner to take a message to
19 defendant BARRY BYRON MILLS saying that the Aryan Brotherhood
20 members at the United States Penitentiary at Marion, Illinois,
21 had gone to war with the DC Blacks prison gang.

22 258) In or about March 1997, defendant DAVID MICHAEL
23 SAHAKIAN ordered Michael Wagner to take a message to defendant
24 BARRY BYRON MILLS listing the names of black inmates who were to
25 be killed.

26 259) In or about March 1997, defendant BARRY BYRON
27 MILLS asked defendant RONALD BOYD SLOCUM to contact defendants
28 MICHAEL PATRICK McELHINEY and DAVID MICHAEL SAHAKIAN to determine

1 whether inmate Khalif Mujahid should be murdered for his role in
2 the conflict between the Aryan Brotherhood and the DC Blacks.

3 260) In or about April 1997, defendant DAVID MICHAEL
4 SAHAKIAN placed Terry Walker's name on the "hit list" of black
5 inmates to be murdered.

6 261) In or about April 1997, defendant DAVID MICHAEL
7 SAHAKIAN issued an order to white inmates at the United States
8 Penitentiary at Marion, Illinois, that any black inmate who used
9 violence against a white inmate was to be murdered.

10 262) On or about April 14, 1997, in the Central
11 District of California and elsewhere, defendant RONALD BOYD
12 SLOCUM told defendant BARRY BYRON MILLS during a telephone call
13 that black inmates had attacked Aryan Brotherhood members at the
14 United States Penitentiary at Marion, Illinois.

15 263) In or before May 1997, defendants MICHAEL PATRICK
16 MCELHINEY and DAVID MICHAEL SAHAKIAN advised defendant RONALD
17 BOYD SLOCUM that Khalif Mujahid should be murdered for his role
18 in the conflict with the DC Blacks.

19 264) In or before May 1997, defendant RONALD BOYD
20 SLOCUM sent word to defendant BARRY BYRON MILLS that Khalif
21 Mujahid should be murdered.

22 265) On or before May 5, 1997, defendant BARRY BYRON
23 MILLS attempted to manufacture a weapon, to be used to murder
24 Khalif Mujahid, using material taken from a light fixture in his
25 prison cell.

26 266) On or about June 11, 1997, Aryan Brotherhood
27 member Ronald Yandell mailed a letter to Patty Yandell asking her
28 to have defendant MARTY LAINE FOAKES inform defendant BARRY BYRON

1 MILLS that Ronald Yandell and Michael Wagner were prepared to go
2 to war against the DC Blacks.

3 267) On or about June 30, 1997, defendant BARRY BYRON
4 MILLS sent a letter to defendant JOANNE LOUISE GUTHRIE asking her
5 to have Patty Yandell inform Ronald Yandell that defendant BARRY
6 BYRON MILLS was going to have Prince Johnson murdered.

7 268) In or about July 1997, defendants MICHAEL PATRICK
8 McELHINEY and DAVID MICHAEL SAHAKIAN ordered Aryan Brotherhood
9 associate Dewey Lee and Raymond Oechsle to murder Wayne Alton if
10 given the opportunity.

11 269) In or before August 1997, defendant JESSE ANTONIO
12 VAN METER and Michael Wagner delivered the message from
13 defendants MICHAEL PATRICK McELHINEY and DAVID MICHAEL SAHAKIAN
14 to defendant BARRY BYRON MILLS that the Aryan Brotherhood members
15 at the United States Penitentiary at Marion, Illinois, had gone
16 to war with the DC Blacks.

17 270) In or before August 1997, defendants BARRY BYRON
18 MILLS and CHRISTOPHER OVERTON GIBSON told Aryan Brotherhood
19 associate Christopher Risk to take a message to defendant TYLER
20 DAVIS BINGHAM asking for approval of a plan to "go to war" with
21 the DC Blacks.

22 271) In or before August 1997, Christopher Risk gave
23 the message from defendants BARRY BYRON MILLS and CHRISTOPHER
24 OVERTON GIBSON to Aryan Brotherhood member Norman Matthews, who
25 in turn was to give the message to defendant TYLER DAVIS BINGHAM.

26 272) In or before August 1997, Norman Matthews
27 delivered the message from defendants BARRY BYRON MILLS and
28 CHRISTOPHER OVERTON GIBSON to defendant TYLER DAVIS BINGHAM.

1 273) In or before August 1997, in the Central District
2 of California and elsewhere, defendant TYLER DAVIS BINGHAM sent a
3 message to defendant RONALD BOYD SLOCUM ordering defendant RONALD
4 BOYD SLOCUM to notify Aryan Brotherhood member Allen Benton that
5 members of the Aryan Brotherhood at the United States
6 Penitentiary at Lewisburg, Pennsylvania, were to murder black
7 inmates at that institution.

8 274) In or about August 1997, defendant TYLER DAVIS
9 BINGHAM ordered Aryan Brotherhood member Jonathan McGinley to
10 send a coded message to Aryan Brotherhood member Kevin Roach
11 saying that Roach was to murder Clarence Hinnant.

12 275) On or about August 17, 1997, defendant TYLER DAVIS
13 BINGHAM attempted to send a message to defendant JOANNE LOUISE
14 GUTHRIE, to be delivered to defendant BARRY BYRON MILLS,
15 approving the decision to "go to war" against the DC Blacks.

16 276) On or about August 23, 1997, in the Central
17 District of California and elsewhere, defendant RONALD BOYD
18 SLOCUM mailed a letter to Allen Benton containing a message
19 written in "invisible ink" saying that defendant TYLER DAVIS
20 BINGHAM had issued an order that Aryan Brotherhood members were
21 to go to war against the DC Blacks.

22 277) On or about August 25, 1997, in the Central
23 District of California and elsewhere, defendant RONALD BOYD
24 SLOCUM mailed a card to defendant BARRY BYRON MILLS saying that
25 defendant RONALD BOYD SLOCUM had received the message from
26 defendant TYLER DAVIS BINGHAM about the need to kill black
27 inmates at the United States Penitentiary at Lewisburg,
28 Pennsylvania.

1 278) On or about August 27, 1997, Dewey Lee and Raymond
2 Oechsle attempted to murder Wayne Alton by stabbing him.

3 279) On or about August 28, 1997, defendant WAYNE
4 BRIDGEWATER and Allen Benton heated the letter that had been sent
5 by defendant RONALD BOYD SLOCUM on approximately August 25, 1997,
6 in order to reveal the message written in "invisible ink."

7 280) On or about August 28, 1997, in the Central
8 District of California and elsewhere, defendant RONALD BOYD
9 SLOCUM told Allen Benton during a telephone call that the message
10 about the war with the DC Blacks was the only hidden message in
11 the letter defendant RONALD BOYD SLOCUM had sent to Benton on
12 approximately August 25, 1997.

13 281) On or about August 28, 1997, defendant WAYNE
14 BRIDGEWATER told defendants JOHN STANLEY CAMPBELL, JR., JASON LEE
15 SCHWYHART, and HENRY MICHAEL HOUSTON about the war with the DC
16 Blacks.

17 282) On or about August 28, 1997, defendants WAYNE
18 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
19 HENRY MICHAEL HOUSTON made plans to murder black inmates in
20 Cellblock A at the United States Penitentiary at Lewisburg,
21 Pennsylvania.

22 283) On or about August 28, 1997, defendant HENRY
23 MICHAEL HOUSTON sneaked into Cellblock A at the United States
24 Penitentiary at Lewisburg, Pennsylvania, in order to participate
25 in the murder of black inmates in Cellblock A.

26 284) On or about August 28, 1997, defendants WAYNE
27 BRIDGEWATER, JOHN STANLEY CAMPBELL, JR., JASON LEE SCHWYHART, and
28 HENRY MICHAEL HOUSTON armed themselves with prison-made knives.

1 285) On or about August 28, 1997, defendant WAYNE
2 BRIDGEWATER murdered Frank Joyner by stabbing him to death.

3 286) On or about August 28, 1997, defendant HENRY
4 MICHAEL HOUSTON and Allen Benton murdered Abdul Salaam by
5 stabbing him to death.

6 287) On or about August 28, 1997, defendant JASON LEE
7 SCHWYHART attempted to murder Byron Ball by stabbing him.

8 288) On or about August 28, 1997, defendant WAYNE
9 BRIDGEWATER attempted to murder Larry Fortune by stabbing him.

10 289) On or about August 28, 1997, defendants JOHN
11 STANLEY CAMPBELL, JR., and JASON LEE SCHWYHART attempted to
12 murder Titus Webster by stabbing him.

13 290) On or about August 28, 1997, defendants JOHN
14 STANLEY CAMPBELL, JR., and JASON LEE SCHWYHART attempted to
15 murder Harold Roberts by stabbing him.

16 291) In or about September 1997, defendant JOSEPH
17 PRINCIPE arranged to have defendant BARRY BYRON MILLS and Kevin
18 Roach placed on recreation in the same area so that defendant
19 BARRY BYRON MILLS and Roach could communicate about Aryan
20 Brotherhood affairs.

21 292) In or about September 1997, defendant BARRY BYRON
22 MILLS told Kevin Roach that the Aryan Brotherhood was at war with
23 the DC Blacks.

24 293) On or about September 1, 1997, in the Central
25 District of California and elsewhere, defendant RONALD BOYD
26 SLOCUM mailed a letter to defendant TYLER DAVIS BINGHAM saying
27 that he had passed along the message from defendant TYLER DAVIS
28 BINGHAM to Allen Benton about the need to murder black inmates at

1 the United States Penitentiary at Lewisburg, Pennsylvania.

2 294) On or about September 3, 1997, in the Central
3 District of California and elsewhere, defendant RONALD BOYD
4 SLOCUM discussed the order to murder black inmates at the United
5 States Penitentiary at Lewisburg, Pennsylvania, during a
6 telephone call with Allen Benton.

7 295) In or about October 1997, defendant BARRY BYRON
8 MILLS ordered defendant JESSE ANTONIO VAN METER to murder a
9 member of the DC Blacks as soon as given the opportunity.

10 296) On or about November 12, 1997, defendant JESSE
11 ANTONIO VAN METER attempted to murder Wardell Hillard by stabbing
12 him.

13 297) On or about December 25, 1997, defendant STEVE
14 LOREN SCOTT sent a message to Aryan Brotherhood member Lawrence
15 Klaker informing Klaker that the Aryan Brotherhood was "at on
16 sight war" with the DC Blacks.

17 298) On or about December 29, 1997, defendant STEVE
18 LOREN SCOTT sent a message to Lawrence Klaker informing Klaker of
19 efforts to manufacture weapons to arm all members of the Aryan
20 Brotherhood for the war against the DC Blacks.

21 299) On or about January 30, 1998, defendant STEVE
22 LOREN SCOTT had secreted within his body a prison-made knife to
23 be used in the war against the DC Blacks.

24 300) On or about January 30, 1998, Ronald Yandell
25 possessed a prison-made knife to be used in the war against the
26 DC Blacks.

27 301) On or about February 2, 1998, defendant STEVEN
28 WILLIAM HICKLIN possessed a prison-made knife to be used in the

1 war against the DC Blacks.

2 302) On or about June 9, 1998, defendant STEVE LOREN
3 SCOTT possessed a "hit list" of black inmates who were to be
4 murdered.

5 303) On or about November 16, 1998, defendant TYLER
6 DAVIS BINGHAM assaulted Leroy Elmore.

7 304) On or about November 16, 1998, defendant JOSEPH
8 PRINCIPE filed a false Bureau of Prisons report stating that
9 Leroy Elmore assaulted defendant TYLER DAVIS BINGHAM and that
10 Leroy Elmore appeared to have a weapon during the altercation
11 with defendant TYLER DAVIS BINGHAM.

305) In or about May 1999, Aryan Brotherhood associate
Terry Wright supplied a knife to defendant RICHARD SCOTT McINTOSH
to be used to murder Terry Walker.

15 306) On or about May 18, 1999, defendants RICHARD SCOTT
16 McINTOSH and CARL EDGAR KNORR, JR., murdered Terry Walker by
17 stabbing him to death.

18 307) On or about May 19, 1999, defendant DAVID MICHAEL
19 SAHAKIAN had secreted within his body a prison-made knife to be
20 used in the war against the DC Blacks.

308) On or about November 24, 2000, defendant STEVE
LOREN SCOTT attempted to murder Erving Bond by stabbing him.

Murder of Aaron Marsh

24 309) In or before March 1997, the members of the
25 California Commission, including defendants JOHN WILLIAM STINSON,
26 RICHARD LLOYD TERFLINGER, ROBERT LEE GRIFFIN, and DAVID ALLEN
27 CHANCE, decided to order that Aryan Brotherhood member Aaron
28 Marsh be murdered for failure to carry out an order to murder

1 another inmate.

2 310) In or before March 1997, defendant RICHARD LLOYD
3 TERFLINGER sent a message to Aryan Brotherhood member Brian Healy
4 saying that Aaron Marsh was to be murdered.

5 311) On or about March 13, 1997, Brian Healy told
6 defendant ELLIOTT SCOTT GRIZZLE that Aaron Marsh was to be
7 murdered.

8 312) In or before July 1997, defendant ELLIOTT SCOTT
9 GRIZZLE told defendant GARY JOE LITTRELL that Aaron Marsh was to
10 be murdered.

11 313) On or about July 25, 1997, defendant GARY JOE
12 LITTRELL murdered Aaron Marsh by strangling him to death.

13 Attempted Murder of Michael Nevergall

14 314) In or before April 1997, defendant BARRY BYRON
15 MILLS ordered defendant CHRISTOPHER OVERTON GIBSON to murder
16 Michael Nevergall for having made negative comments about the
17 Aryan Brotherhood.

18 315) On or about April 8, 1997, defendants CHRISTOPHER
19 OVERTON GIBSON, MANUEL LARRY JACKSON, and RAFAEL GONZALEZ-MUNOZ,
20 JR., attempted to murder Michael Nevergall by stabbing him.

21 316) On or about September 1997, defendant CHRISTOPHER
22 OVERTON GIBSON told Aryan Brotherhood member Kevin Roach that he
23 had participated in the attempted murder of Michael Nevergall on
24 behalf of the Aryan Brotherhood.

25 317) On or about November 1998, defendant MANUEL LARRY
26 JACKSON told Aryan Brotherhood member Eugene Bentley that he had
27 participated in the attempted murder of Michael Nevergall on
28 behalf of the Aryan Brotherhood.

1 318) On or about November 1998, defendant RAFAEL
2 GONZALEZ-MUNOZ told Aryan Brotherhood member Eugene Bentley that
3 he had participated in the attempted murder of Michael Nevergall
4 on behalf of the Aryan Brotherhood.

5 Murder of Mark Kulikov

6 319) On or about November 8, 1999, Aryan Brotherhood
7 member Christopher Poore murdered Mark Kulikov by shooting him.

8 320) On or about November 8, 1999, following the murder
9 of Mark Kulikov, Christopher Poore told onlookers that he
10 committed the murder for the Aryan Brotherhood because Kulikov
11 was not giving the Aryan Brotherhood its share of drug
12 trafficking proceeds.

13 Solicitation to Murder Jason Butler

14 321) On or about October 7, 2000, in the Central
15 District of California and elsewhere, defendant ELLIOTT SCOTT
16 GRIZZLE sent a letter to Jonathan Schauerman asking him to murder
17 Jason Butler because Butler had physically abused defendant
18 BRENDA JO RILEY.

19 322) On or about October 31, 2000, in the Central
20 District of California and elsewhere, defendant ELLIOTT SCOTT
21 GRIZZLE sent a second letter to Jonathan Schauerman asking him to
22 murder Jason Butler.

23 Use of the Mail

24 323) On or about March 24, 1995, defendant BARRY BYRON
25 MILLS mailed a letter to Shirley Crowder in which, among other
26 things, defendant BARRY BYRON MILLS asked Crowder to give the
27 telephone number of defendant MARTY LAINE FOAKES to Jeff Fort,
28 leader of the El Rukns criminal organization.

1 324) On or about April 11, 1995, defendant BARRY BYRON
2 MILLS mailed a letter to Shirley Crowder in which, among other
3 things, defendant BARRY BYRON MILLS thanked Crowder for
4 forwarding a message to Jeff Fort.

5 325) On or about March 11, 1996, in the Central
6 District of California and elsewhere, defendant RONALD BOYD
7 SLOCUM mailed a letter to defendant BARRY BYRON MILLS in which,
8 among other things, defendant RONALD BOYD SLOCUM said that he had
9 recently met with defendant ROBERT LEE GRIFFIN.

10 326) On or about April 11, 1996, in the Central
11 District of California and elsewhere, defendant MICHAEL BRUCE
12 SHEPHERD mailed a letter to Charles Roe in which, among other
13 things, defendant MICHAEL BRUCE SHEPHERD told Roe to contact
14 defendant DEBRA LEE STINSON to tell her about a rumor that
15 Mexican Mafia members had assaulted defendant ROBERT LEE GRIFFIN.

16 327) On or about July 5, 1996, in the Central District
17 of California and elsewhere, defendant BARRY BYRON MILLS mailed a
18 letter to Charles Roe in which, among other things, defendant
19 BARRY BYRON MILLS told Roe to speak to defendant RONALD BOYD
20 SLOCUM about a rumor that Mexican Mafia members had assaulted
21 defendant ROBERT LEE GRIFFIN.

22 328) On or about August 10, 1996, in the Central
23 District of California and elsewhere, defendant RONALD BOYD
24 SLOCUM mailed a letter to defendant BARRY BYRON MILLS in which,
25 among other things, defendant RONALD BOYD SLOCUM said that
26 Charles Roe should not be trusted.

27 329) On or about August 23, 1996, in the Central
28 District of California and elsewhere, defendant RICHARD LLOYD

1 TERFLINGER mailed a letter to Charles Roe in which, among other
2 things, defendant RICHARD LLOYD TERFLINGER asked Roe to have him
3 and defendant MICHAEL BRUCE SHEPHERD brought to Orange County
4 Jail as witnesses in a criminal case.

5 330) On or about December 30, 1996, in the Central
6 District of California and elsewhere, defendant RONALD BOYD
7 SLOCUM mailed to defendant BARRY BYRON MILLS a money order and a
8 letter in which, among other things, defendant RONALD BOYD SLOCUM
9 said that the money had come from Oreste Abbamonte and that
10 defendant EDGAR WESLEY HEVLE had been disciplined by the Federal
11 Bureau of Prisons for involvement in a murder.

12 331) On or about December 30, 1996, in the Central
13 District of California and elsewhere, defendant RONALD BOYD
14 SLOCUM mailed to defendant TYLER DAVIS BINGHAM a money order and
15 a letter in which, among other things, defendant RONALD BOYD
16 SLOCUM said that the money had come from Oreste Abbamonte.

17 332) On or about January 7, 1997, in the Central
18 District of California and elsewhere, defendant BARRY BYRON MILLS
19 mailed a letter to defendant RONALD BOYD SLOCUM in which, among
20 other things, defendant BARRY BYRON MILLS said that he had
21 received a money order from defendant RONALD BOYD SLOCUM and
22 asked defendant RONALD BOYD SLOCUM to thank Oreste Abbamonte for
23 the money.

24 333) On or about April 2, 1997, in the Central District
25 of California and elsewhere, defendant RONALD BOYD SLOCUM mailed
26 a letter to defendant BARRY BYRON MILLS in which, among other
27 things, defendant RONALD BOYD SLOCUM warned that defendant ROBERT
28 LEE GRIFFIN and others might be facing a racketeering indictment.

1 334) On or about October 6, 1997, defendant JOANNE
2 LOUISE GUTHRIE mailed a letter to defendant BARRY BYRON MILLS in
3 which defendant JOANNE LOUISE GUTHRIE passed along information
4 about Aryan Brotherhood affairs learned from a number of Aryan
5 Brotherhood members and associates.

6 335) On or about October 14, 1997, defendant BARRY
7 BYRON MILLS mailed a letter to defendant JOANNE LOUISE GUTHRIE in
8 which, among other things, defendant BARRY BYRON MILLS asked
9 defendant JOANNE LOUISE GUTHRIE to have one of her friends pass
10 information to and from incarcerated Aryan Brotherhood member
11 Norman Matthews.

12 336) On or about November 20, 1997, defendant BARRY
13 BYRON MILLS mailed a letter to defendant JOANNE LOUISE GUTHRIE in
14 which, among other things, defendant BARRY BYRON MILLS asked
15 defendant JOANNE LOUISE GUTHRIE to contact defendant RONALD BOYD
16 SLOCUM to find out whether there had been racial violence at the
17 United States Penitentiary at Lompoc, California, as part of the
18 Aryan Brotherhood's war with the DC Blacks prison gang.

19 337) On or about December 2, 1997, defendant JOANNE
20 LOUISE GUTHRIE mailed a letter to defendant BARRY BYRON MILLS in
21 which, among other things, defendant JOANNE LOUISE GUTHRIE said
22 that Aryan Brotherhood member Terry Marsh had not been in contact
23 with the Aryan Brotherhood in 18 months.

24 338) In or about 1998, defendant CLEO ROY mailed a
25 letter to Aryan Brotherhood member Phillip Myers in which, among
26 other things, defendant CLEO ROY asked that Myers send money to
27 defendant CLEO ROY in fulfillment of Myers' obligations as an
28 Aryan Brotherhood member who had been released from prison.

1 339) On or about January 6, 1998, defendant BARRY BYRON
2 MILLS mailed a letter to defendant MARK ALAN NYQUIST in which,
3 among other things, defendant BARRY BYRON MILLS ordered defendant
4 MARK ALAN NYQUIST to commit criminal acts on behalf of the Aryan
5 Brotherhood while out of custody.

6 340) On or about January 7, 1998, defendant BARRY BYRON
7 MILLS ordered Aryan Brotherhood member Kevin Roach to mail a
8 letter to defendant MARK ALAN NYQUIST saying, among other things,
9 that defendant MARK ALAN NYQUIST was to begin manufacturing
10 methamphetamine in order to make money for the Aryan Brotherhood.

11 341) On or about January 15, 1998, defendant JOANNE
12 LOUISE GUTHRIE mailed a letter to defendant BARRY BYRON MILLS in
13 which, among other things, defendant JOANNE LOUISE GUTHRIE said
14 that she had made contact with Phillip Myers.

15 342) On or about January 27, 1998, defendant BARRY
16 BYRON MILLS mailed a letter to defendant JOANNE LOUISE GUTHRIE in
17 which, among other things, defendant BARRY BYRON MILLS told
18 defendant JOANNE LOUISE GUTHRIE to stay in contact with Phillip
19 Myers and to assist Myers in committing acts on behalf of the
20 Aryan Brotherhood.

21 343) On or about September 2, 1998, in the Central
22 District of California and elsewhere, defendant BARRY BYRON MILLS
23 mailed a letter to defendant RONALD BOYD SLOCUM in which, among
24 other things, defendant BARRY BYRON MILLS told defendant RONALD
25 BOYD SLOCUM that defendant JOANNE LOUISE GUTHRIE is completely
26 loyal to the Aryan Brotherhood.

27 344) On or about September 19, 1998, defendant EDGAR
28 WESLEY HEVLE mailed a letter to Phillip Myers in which, among

1 other things, defendant EDGAR WESLEY HEVLE asked Myers to say
2 whether Myers would fulfill his obligations to the Aryan
3 Brotherhood.

4 345) On or about September 24, 1998, defendant SEAN
5 MATTHEW DARCY mailed a letter to defendant TYLER DAVIS BINGHAM in
6 which, among other things, defendant SEAN MATTHEW DARCY informed
7 defendant TYLER DAVIS BINGHAM who defendants MICHAEL PATRICK
8 McELHINEY and DAVID MICHAEL SAHAKIAN were incarcerated with and
9 that defendants MICHAEL PATRICK McELHINEY and DAVID MICHAEL
10 SAHAKIAN anticipated being indicted on very serious charges.

11 346) On or about December 10, 1998, in the Central
12 District of California and elsewhere, defendant BARRY BYRON MILLS
13 mailed a letter to defendant RONALD BOYD SLOCUM in which, among
14 other things, defendant BARRY BYRON MILLS said that he and
15 defendant TYLER DAVIS BINGHAM had recently gotten into fights
16 with black inmates as part of the Aryan Brotherhood's war with
17 the DC Blacks.

18 347) On or about January 21, 1999, defendant JOANNE
19 LOUISE GUTHRIE mailed to defendant BARRY BYRON MILLS a money
20 order and a letter inquiring, among other things, about whether
21 defendant TYLER DAVIS BINGHAM and Aryan Brotherhood member Ronald
22 Yandell were being held in segregation.

23 348) On or about February 9, 1999, in the Central
24 District of California and elsewhere, defendant JOHN WILLIAM
25 STINSON mailed a letter to Aryan Brotherhood member Kenneth
26 Landers in which, among other things, defendant JOHN WILLIAM
27 STINSON ordered Landers to contact defendant RONALD BOYD SLOCUM
28 and to take orders from defendant RONALD BOYD SLOCUM while out of

1 custody.

2 349) On or about March 4, 1999, in the Central District
3 of California and elsewhere, defendant THOMAS LEROY HAMPTON
4 mailed a letter to defendant JOHN WILLIAM STINSON in which, among
5 other things, defendant THOMAS LEROY HAMPTON said that he had
6 committed crimes on behalf of the Aryan Brotherhood while out of
7 custody and would share the proceeds of his crimes with other
8 Aryan Brotherhood members.

9 350) On or about March 10, 1999, in the Central
10 District of California and elsewhere, defendant JOHN WILLIAM
11 STINSON mailed a letter to Kenneth Landers in which, among other
12 things, defendant JOHN WILLIAM STINSON gave Landers permission to
13 extort money from white drug traffickers and other white
14 criminals on behalf of the Aryan Brotherhood.

15 351) On or about April 5, 1999, in the Central District
16 of California and elsewhere, defendant RONALD BOYD SLOCUM mailed
17 a letter to Paul Kelly, to be given to Phillip Myers, telling
18 Myers to get in contact with the Aryan Brotherhood.

19 352) On or about April 15, 1999, defendant BARRY BYRON
20 MILLS mailed a letter to defendant MARK ALAN NYQUIST in which,
21 among other things, defendant BARRY BYRON MILLS asked defendant
22 MARK ALAN NYQUIST to say whether he remained loyal to the Aryan
23 Brotherhood.

24 353) On or about April 28, 1999, defendant MARK ALAN
25 NYQUIST mailed a letter to defendant BARRY BYRON MILLS in which,
26 among other things, defendant MARK ALAN NYQUIST pledged his
27 loyalty to the Aryan Brotherhood.

28 354) On or about June 23, 1999, defendant MARTY LAINE

1 FOAKES mailed a letter to defendant BARRY BYRON MILLS in which,
2 among other things, defendant MARTY LAINE FOAKES said that she
3 had sent a message to organized crime leader Nicodemo Scarfo but
4 had not received a response.

5 355) On or about August 10, 1999, defendant MICHAEL
6 BRUCE SHEPHERD caused a letter to be mailed to Aryan Brotherhood
7 member Robert Crane in which, among other things, defendant
8 MICHAEL BRUCE SHEPHERD set forth a proposal to organize Aryan
9 Brotherhood members who are out of custody.

10 356) On or about August 21, 1999, defendant MICHAEL
11 BRUCE SHEPHERD caused a letter to be mailed to Robert Crane
12 containing, among other things, responses from Aryan Brotherhood
13 leaders to the proposal of defendant MICHAEL BRUCE SHEPHERD to
14 organize Aryan Brotherhood members who are out of custody.

15 357) On or about September 2, 1999, defendant MICHAEL
16 BRUCE SHEPHERD caused a letter to be mailed to Robert Crane in
17 which, among other things, defendant MICHAEL BRUCE SHEPHERD said
18 that he was going forward with plans to organize Aryan
19 Brotherhood members who are out of custody.

20 358) On or about September 24, 1999, defendant MICHAEL
21 BRUCE SHEPHERD caused a letter to be mailed to Robert Crane
22 containing, among other things, a message from defendant JOHN
23 WILLIAM STINSON approving James Magee for membership in the Aryan
24 Brotherhood.

25 359) On or about December 11, 1999, in the Central
26 District of California and elsewhere, defendant RONALD BOYD
27 SLOCUM mailed a letter to defendant STEVE LOREN SCOTT in which,
28 among other things, defendant RONALD BOYD SLOCUM said that he had

1 agreed to commit crimes with an Aryan Brotherhood member who was
2 later discovered to be cooperating with law enforcement
3 authorities.

4 360) On or about January 28, 2000, in the Central
5 District of California and elsewhere, defendant JOHN WILLIAM
6 STINSON mailed a letter to defendant JOHN HENRY HARPER in which,
7 among other things, defendant JOHN WILLIAM STINSON ordered
8 defendant JOHN HENRY HARPER to commit crimes on behalf of the
9 Aryan Brotherhood and to provide money to incarcerated Aryan
10 Brotherhood members.

11 361) On or about February 16, 2000, in the Central
12 District of California and elsewhere, defendant JOHN HENRY HARPER
13 mailed a letter to Aryan Brotherhood member Todd Ashker in which,
14 among other things, defendant JOHN HENRY HARPER said that he had
15 contacted defendant RONALD BOYD SLOCUM in order to begin
16 committing criminal acts on behalf of the Aryan Brotherhood.

17 362) On or about February 21, 2000, in the Central
18 District of California and elsewhere, defendant JOHN HENRY HARPER
19 mailed a letter to Todd Ashker in which, among other things,
20 defendant JOHN HENRY HARPER said that he had contacted an
21 attorney in an attempt to intimidate the attorney into doing the
22 Aryan Brotherhood's bidding.

23 363) On or about April 3, 2000, in the Central District
24 of California and elsewhere, defendant RICHARD LLOYD TERFLINGER
25 mailed a letter to Deborah Mickey, to be forwarded to Aryan
26 Brotherhood member James Mickey, in which, among other things,
27 defendant RICHARD LLOYD TERFLINGER told Mickey to have white
28 inmates refrain from committing acts of racial violence so that

1 Aryan Brotherhood members at Pelican Bay State Prison in Crescent
2 City, California, would be released from segregation.

3 364) On or about June 1, 2000, in the Central District
4 of California and elsewhere, defendant EDWARD TYLER BURNETT
5 mailed a letter to defendant RONALD BOYD SLOCUM in which, among
6 other things, defendant EDWARD TYLER BURNETT asked defendant
7 RONALD BOYD SLOCUM to look into the background of a correctional
8 officer at Pelican Bay State Prison in Crescent City, California,
9 to see whether the correctional officer should be murdered.

10 365) On or about November 16, 2000, defendant LEE ANN
11 MARTIN mailed a letter to defendant RICHARD LLOYD TERFLINGER in
12 which, among other things, defendant LEE ANN MARTIN said that she
13 would be sending defendant RICHARD LLOYD TERFLINGER money she had
14 received from an Aryan Brotherhood member or associate.

15 366) On or about November 26, 2000, in the Central
16 District of California and elsewhere, defendant EDWARD TYLER
17 BURNETT mailed a letter to defendant RONALD BOYD SLOCUM in which,
18 among other things, defendant EDWARD TYLER BURNETT asked whether
19 defendant RONALD BOYD SLOCUM had looked into the background of a
20 correctional officer at Pelican Bay State Prison in Crescent
21 City, California.

22 367) On or about December 3, 2000, defendant RICHARD
23 LLOYD TERFLINGER mailed a letter to defendant LEE ANN MARTIN in
24 which, among other things, defendant RICHARD LLOYD TERFLINGER
25 chastised defendant LEE ANN MARTIN for failing to perform her
26 duties to the Aryan Brotherhood in an efficient manner.

27 368) On or about March 27, 2001, in the Central
28 District of California and elsewhere, defendant GARY JOE LITRELL

1 mailed a letter to Cleta Baker in which, among other things,
2 defendant GARY JOE LITTRELL told Baker that she was to follow
3 only his orders in matters relating to the Aryan Brotherhood.

4 369) On or about July 24, 2001, defendant BRENDAL JO
5 RILEY mailed a letter to defendant ELLIOTT SCOTT GRIZZLE
6 containing information about a government witness in a case
7 involving the Aryan Brotherhood.

8 370) On or about August 9, 2001, defendant BRENDAL JO
9 RILEY mailed a letter to defendant JOHN WILLIAM STINSON in which,
10 among other things, defendant BRENDAL JO RILEY described the
11 health problems of a member of the Mexican Mafia.

12 371) On or about September 27, 2001, defendant ELLIOTT
13 SCOTT GRIZZLE mailed a letter to defendant BRENDAL JO RILEY in
14 which, among other things, defendant ELLIOTT SCOTT GRIZZLE told
15 defendant BRENDAL JO RILEY to obtain information about court cases
16 involving the Aryan Brotherhood.

17 372) On or about December 9, 2001, in the Central
18 District of California and elsewhere, defendant RICHARD LLOYD
19 TERFLINGER mailed a letter to Aryan Brotherhood associate Simone
20 Lawrence in which, among other things, defendant RICHARD LLOYD
21 TERFLINGER told Lawrence to obtain information about the status
22 of a criminal case charging Aryan Brotherhood member Christopher
23 Poore with having murdered Mark Kulikov.

24 373) On or about February 21, 2002, in the Central
25 District of California and elsewhere, defendant RONALD BOYD
26 SLOCUM mailed a letter to defendant ROBERT LEE GRIFFIN in which,
27 among other things, defendant RONALD BOYD SLOCUM told defendant
28 ROBERT LEE GRIFFIN that defendant EDWARD TYLER BURNETT had not

1 dropped out of the Aryan Brotherhood.

2 Use of the Telephone

3 374) On or about July 7, 1996, in the Central District
4 of California and elsewhere, defendants BARRY BYRON MILLS and
5 RONALD BOYD SLOCUM spoke on the telephone and, among other
6 things, defendant BARRY BYRON MILLS told defendant RONALD BOYD
7 SLOCUM to contact Charles Roe.

8 375) On or about August 2, 1996, in the Central
9 District of California and elsewhere, defendant BARRY BYRON MILLS
10 spoke on the telephone with Charles Roe and, among other things,
11 expressed a desire to communicate regularly with the leaders of
12 the California faction of the Aryan Brotherhood.

13 376) On or about September 10, 1996, in the Central
14 District of California and elsewhere, defendant RONALD BOYD
15 SLOCUM spoke on the telephone with Mary Bentley in order to
16 arrange a narcotics transaction in which the narcotics would
17 eventually be smuggled into a federal penitentiary.

18 377) On or about September 23, 1996, in the Central
19 District of California and elsewhere, defendants TYLER DAVIS
20 BINGHAM and RONALD BOYD SLOCUM spoke on the telephone and, among
21 other things, defendant RONALD BOYD SLOCUM provided defendant
22 TYLER DAVIS BINGHAM with information about the whereabouts and
23 well-being of various Aryan Brotherhood members and associates.

24 378) On or about September 29, 1996, in the Central
25 District of California and elsewhere, defendants BARRY BYRON
26 MILLS and RONALD BOYD SLOCUM spoke on the telephone and, among
27 other things, defendant BARRY BYRON MILLS said that he was
28 sending capable Aryan Brotherhood members and associates to

1 commit criminal acts for the Aryan Brotherhood at the direction
2 of defendant RONALD BOYD SLOCUM.

3 379) On or about December 27, 1996, in the Central
4 District of California and elsewhere, defendant RONALD BOYD
5 SLOCUM spoke on the telephone with Oreste Abbamonte and, among
6 other things, agreed to send money received from Abbamonte to
7 defendants BARRY BYRON MILLS and TYLER DAVIS BINGHAM.

8 380) On or about April 2, 1997, defendants BARRY BYRON
9 MILLS and JOANNE LOUISE GUTHRIE spoke on the telephone and, among
10 other things, defendant BARRY BYRON MILLS said that he had
11 sponsored Ronald Yandell for membership in the Aryan Brotherhood.

12 381) On or about June 12, 1997, defendants BARRY BYRON
13 MILLS and JOANNE LOUISE GUTHRIE spoke on the telephone and, among
14 other things, defendant BARRY BYRON MILLS told defendant JOANNE
15 LOUISE GUTHRIE of plans to have Ronald Yandell commit illegal
16 acts on behalf of the Aryan Brotherhood once released from
17 prison.

18 382) On or about July 6, 1997, defendants TYLER DAVIS
19 BINGHAM and SEAN MATTHEW DARCY spoke on the telephone and, among
20 other things, defendant SEAN MATTHEW DARCY told defendant TYLER
21 DAVIS BINGHAM where organized crime leader Nicodemo Scarfo was
22 being housed.

23 383) On or about December 23, 1997, defendant JOANNE
24 LOUISE GUTHRIE, acting on behalf of defendant BARRY BYRON MILLS,
25 left a telephone message for Aryan Brotherhood member Phillip
26 Myers asking Myers to get in contact with her.

27 384) On or about December 24, 1997, defendant JOANNE
28 LOUISE GUTHRIE, acting on behalf of defendant BARRY BYRON MILLS,

1 left a telephone message for Phillip Myers asking Myers to get in
2 contact with her.

3 385) On or about January 14, 1998, defendant JOANNE
4 LOUISE GUTHRIE, acting on behalf of defendant BARRY BYRON MILLS,
5 left a telephone message for Phillip Myers asking Myers to get in
6 contact with her.

7 386) On or about January 27, 1998, defendant JOANNE
8 LOUISE GUTHRIE, acting on behalf of defendant BARRY BYRON MILLS,
9 left a telephone message for Phillip Myers asking Myers to get in
10 contact with her.

11 387) On or about October 1, 1998, in the Central
12 District of California, defendant DEBRA LEE STINSON spoke on the
13 telephone with Michael Davis and, among other things, told Davis
14 to contact defendant JOHN WILLIAM STINSON to get permission to
15 talk with her about Aryan Brotherhood activities.

16 388) On or about April 3, 1999, in the Central District
17 of California and elsewhere, defendant RONALD BOYD SLOCUM spoke
18 on the telephone with Oreste Abbamonte and, among other things,
19 told Abbamonte when racial troubles started between the Aryan
20 Brotherhood and the DC Blacks prison gang.

21 389) On or about April 14, 1999, in the Central
22 District of California and elsewhere, defendants BARRY BYRON
23 MILLS and RONALD BOYD SLOCUM spoke on the telephone and, among
24 other things, defendant BARRY BYRON MILLS said that Aryan
25 Brotherhood members who are out of custody need to be made to
26 share the proceeds of their criminal activities.

27 390) On or about October 15, 1999, in the Central
28 District of California and elsewhere, defendant RONALD BOYD

1 SLOCUM spoke on the telephone with Aryan Brotherhood member
2 Eugene Bentley and, among other things, agreed to provide Bentley
3 with narcotics to be smuggled into the United States Penitentiary
4 at Leavenworth, Kansas.

5 391) On or about August 6, 2000, defendants MICHAEL
6 PATRICK McELHINEY and SEAN MATTHEW DARCY spoke on the telephone
7 and, among other things, defendant MICHAEL PATRICK McELHINEY said
8 that he and defendant DAVID MICHAEL SAHAKIAN were in control of
9 the activities of white inmates at the United States Penitentiary
10 at Marion, Illinois.

11 392) On or about August 29, 2000, defendants TYLER
12 DAVIS BINGHAM and SEAN MATTHEW DARCY spoke on the telephone and,
13 among other things, defendant SEAN MATTHEW DARCY told defendant
14 TYLER DAVIS BINGHAM that defendants MICHAEL PATRICK McELHINEY and
15 DAVID MICHAEL SAHAKIAN were in control of the activities of white
16 inmates at the United States Penitentiary at Marion, Illinois.

17 All in violation of Title 18, United States Code, Section
18 1962(d).

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1 COUTNS THREE THROUGH EIGHT

2 [18 U.S.C. § 1959(a)(1)]

3 68. At all times relevant to this Indictment, the Aryan
4 Brotherhood, as described more particularly in paragraphs One
5 through Fifteen of the Introductory Allegations of this
6 Indictment, which paragraphs are incorporated and realleged
7 herein as if set forth in full, has constituted an enterprise as
8 that term is defined in Title 18, United States Code, Section
9 1959(b)(2), that is, a group of individuals associated in fact,
10 which was engaged in, and the activities of which affected,
11 interstate and foreign commerce.

12 69. At all times relevant to this Indictment, the Aryan
13 Brotherhood, through its members and associates, has been engaged
14 in racketeering activity, as defined in Title 18, United States
15 Code, Sections 1959(b)(1) and 1961(1), that is, acts involving
16 murder, extortion, and robbery, in violation of the laws of
17 Georgia, Illinois, California, Kansas, Colorado, Pennsylvania,
18 and Missouri, and narcotics trafficking, in violation of Title
19 21, United States Code, Sections 841 and 846.

20 70. On or about the dates specified below, the defendants
21 specified below committed the offenses specified below, and each
22 such offense was committed for the purpose of gaining entrance to
23 or maintaining and increasing the position of the specified
24 defendants in the Aryan Brotherhood, an enterprise engaged in
25 racketeering activity, in violation of Title 18, United States
26 Code, Section 1959(a)(1).

27 COUNT THREE

28 71. Paragraphs Sixty-Eight through Seventy are hereby

1 incorporated and realleged herein as if set forth in full.

2 72. On or about August 25, 1995, within the Central
3 District of California and elsewhere, defendants MICHAEL PATRICK
4 McELHINEY, aka "Big Mac," and DAVID MICHAEL SAHAKIAN unlawfully,
5 willfully, deliberately, maliciously, and with premeditation and
6 malice aforethought did aid, abet, advise, encourage, and
7 otherwise participate in the murder of Charles Leger, in
8 violation of Title 18, United States Code, Sections 2(a) and
9 1111.

COUNT FOUR

11 73. Paragraphs Sixty-Eight through Seventy are hereby
12 incorporated and realleged herein as if set forth in full.

13 74. On or about February 7, 1996, within the Central
14 District of California and elsewhere, defendants JOHN WILLIAM
15 STINSON, aka "Youngster," aka "The Youngest," RICHARD LLOYD
16 TERFLINGER, aka "Bart Simpson," ROBERT LEE GRIFFIN, aka "Blinky,"
17 aka "McGrif," DAVID ALLEN CHANCE, and EDWARD TYLER BURNETT
18 unlawfully, willfully, deliberately, maliciously, and with
19 premeditation and malice aforethought did aid, abet, advise,
20 encourage, and otherwise participate in the murder of Arthur
21 Biffo, in violation of California Penal Code Sections 31 and 187.

COUNT FIVE

23 75. Paragraphs Sixty-Eight through Seventy are hereby
24 incorporated and realleged herein as if set forth in full.

25 76. On or about July 25, 1997, within the Central District
26 of California and elsewhere, defendants JOHN WILLIAM STINSON, aka
27 "Youngster," aka "The Youngest," RICHARD LLOYD TERFLINGER, aka
28 "Bart Simpson," ROBERT LEE GRIFFIN, aka "Blinky," aka "McGrif,"

1 DAVID ALLEN CHANCE, GARY JOE LITTRELL, and ELLIOTT SCOTT GRIZZLE,
2 aka "Scott," unlawfully, willfully, deliberately, maliciously,
3 and with premeditation and malice aforethought did aid, abet,
4 advise, encourage, and otherwise participate in the murder of
5 Aaron Marsh, in violation of California Penal Code Sections 31
6 and 187.

7 COUNT SIX

8 77. Paragraphs Sixty-Eight through Seventy are hereby
9 incorporated and realleged herein as if set forth in full.

10 78. On or about August 28, 1997, within the Central
11 District of California and elsewhere, defendants BARRY BYRON
12 MILLS, aka "McB," TYLER DAVIS BINGHAM, aka "T.D.," aka "The
13 Hulk," aka "T," aka "Bull," RONALD BOYD SLOCUM, aka "Slo," aka
14 "McKool," MICHAEL PATRICK McELHINEY, aka "Big Mac," DAVID MICHAEL
15 SAHAKIAN, WAYNE BRIDGEWATER, CHRISTOPHER OVERTON GIBSON, EDGAR
16 WESLEY HEVLE, aka "Snail," JOHN STANLEY CAMPBELL, JR., JESSE
17 ANTONIO VAN METER, JASON LEE SCHWYHART, and HENRY MICHAEL
18 HOUSTON, aka "Tweak," unlawfully, willfully, deliberately,
19 maliciously, and with premeditation and malice aforethought did
20 aid, abet, advise, encourage, and otherwise participate in the
21 murder of Frank Joyner, in violation of Title 18, United States
22 Code, Sections 2(a) and 1111.

23 COUNT SEVEN

24 79. Paragraphs Sixty-Eight through Seventy are hereby
25 incorporated and realleged herein as if set forth in full.

26 80. On or about August 28, 1997, within the Central
27 District of California and elsewhere, defendants BARRY BYRON
28 MILLS, aka "McB," TYLER DAVIS BINGHAM, aka "T.D.," aka "The

1 Hulk," aka "T," aka "Bull," RONALD BOYD SLOCUM, aka "Slo," aka
2 "McKool," MICHAEL PATRICK McELHINEY, aka "Big Mac," DAVID MICHAEL
3 SAHAKIAN, WAYNE BRIDGEWATER, CHRISTOPHER OVERTON GIBSON, EDGAR
4 WESLEY HEVLE, aka "Snail," JOHN STANLEY CAMPBELL, JR., JESSE
5 ANTONIO VAN METER, JASON LEE SCHWYHART, and HENRY MICHAEL
6 HOUSTON, aka "Tweak," unlawfully, willfully, deliberately,
7 maliciously, and with premeditation and malice aforethought did
8 aid, abet, advise, encourage, and otherwise participate in the
9 murder of Abdul Salaam, in violation of Title 18, United States
10 Code, Sections 2(a) and 1111.

COUNT EIGHT

12 81. Paragraphs Sixty-Eight through Seventy are hereby
13 incorporated and realleged herein as if set forth in full.

14 82. On or about May 18, 1999, within the Central District
15 of California and elsewhere, defendants BARRY BYRON MILLS, aka.
16 "McB," TYLER DAVIS BINGHAM, aka "T.D.," aka "The Hulk," aka "T,"
17 aka "Bull," RONALD BOYD SLOCUM, aka "Slo," aka "McKool," MICHAEL
18 PATRICK McELHINEY, aka "Big Mac," DAVID MICHAEL SAHAKIAN, STEVE
19 LOREN SCOTT, aka "Scottie," WAYNE BRIDGEWATER, STEVEN WILLIAM
20 HICKLIN, CHRISTOPHER OVERTON GIBSON, EDGAR WESLEY HEVLE, aka
21 "Snail," JOHN STANLEY CAMPBELL, JR., JESSE ANTONIO VAN METER,
22 RICHARD SCOTT MCINTOSH, CARL EDGAR KNORR, JR., JASON LEE
23 SCHWYHART, and HENRY MICHAEL HOUSTON, aka "Tweak," unlawfully,
24 willfully, deliberately, maliciously, and with premeditation and
25 malice aforethought did aid, abet, advise, encourage, and
26 otherwise participate in the murder of Terry Walker, in violation
27 of Title 18, United States Code, Sections 2(a) and 1111.

1 COUNT NINE

2 [18 U.S.C. § 1111]

3 83. On or about August 9, 1989, in Santa Barbara County,
4 within the Central District of California, and within the
5 territorial jurisdiction of the United States, that is, at the
6 United States Penitentiary at Lompoc, California, defendants
7 BARRY BYRON MILLS, TYLER DAVIS BINGHAM, aka "T.D.," aka "The
8 Hulk," aka "T," aka "Bull," RONALD BOYD SLOCUM, aka "Slo," aka
9 "McKool," EDGAR WESLEY HEVLE, aka "Snail," and GLEN ALAN WEST,
10 aka "Speedy," willfully, deliberately, maliciously, and with
11 premeditation and malice aforethought killed and aided and
12 abetted the killing of Arva Lee Ray.

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1 COUNT TEN

2 [18 U.S.C. § 1111]

3 84. On or about December 28, 1992, in Santa Barbara County,
4 within the Central District of California, and within the
5 territorial jurisdiction of the United States, that is, at the
6 United States Penitentiary at Lompoc, California, defendants
7 BARRY BYRON MILLS, TYLER DAVIS BINGHAM, aka "T.D.," aka "The
8 Hulk," aka "T," aka "Bull," RONALD BOYD SLOCUM, aka "Slo," aka
9 "McKool," and DONALD EDWARD KENNEDY willfully, deliberately,
10 maliciously, and with premeditation and malice aforethought
11 killed and aided and abetted the killing of William McKinney.

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NOTICE OF SPECIAL FINDINGS

2 The allegations of Counts Three, Four, Five, Six, Seven, and
3 Eight of this First Superseding Indictment are hereby realleged
4 and incorporated by reference as if fully set forth herein.

5 DEFENDANT BARRY BYRON MILLS

6 As to each of Counts Six and Seven, defendant BARRY BYRON
7 MILLS:

8 1. Was more than 18 years old at the time of the
9 offense (18 U.S.C. § 3591(a));

10 2. Intentionally participated in an act, contemplating
11 that the life of a person would be taken or intending that lethal
12 force would be used in connection with a person, other than a
13 participant in the offense, and the victim died as a direct
14 result of the act (18 U.S.C. § 3591(a)(2)(C));

15 3. Intentionally and specifically engaged in an act of
16 violence, knowing that the act created a grave risk of death to a
17 person, other than one of the participants in the offense, such
18 that participation in the act constituted a reckless disregard
19 for human life and the victim died as a direct result of the act
20 (18 U.S.C. § 3591(a)(2)(D));

21 4. In committing the offense, the death and injury
22 resulting in death occurred during the commission and attempted
23 commission of an offense under 18 U.S.C. § 1118 (Murder by a
24 federal prisoner serving a life term) (18 U.S.C. § 3592(c)(1));

25 5. Committed the offense after previously being convicted
26 of a federal or state offense punishable by a term of
27 imprisonment of more than one year involving the use or attempted
28 or threatened use of a firearm, as defined in 18 U.S.C. § 921,

1 against another person (18 U.S.C. § 3592(c)(2));

2 6. Committed the offense after previously being convicted
3 of a federal or state offense resulting in the death of another
4 for which a sentence of life imprisonment was authorized by
5 statute (18 U.S.C. § 3592(c)(3));

6 7. In committing the offense, knowingly created a grave
7 risk of death to one or more persons in addition to the victim of
8 the offense (18 U.S.C. § 3592(c)(5));

9 8. Committed the offense after substantial planning and
10 premeditation to cause the death of a person (18 U.S.C.
11 § 3592(c)(9)); and

12 9. Intentionally killed and attempted to kill more than
13 one person in a single criminal episode (18 U.S.C.
14 § 3592(c)(16)).

15 All pursuant to Title 18, United States Code, Sections 3591
16 and 3592.

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1 DEFENDANT TYLER DAVIS BINGHAM

2 As to each of Counts Six and Seven, defendant TYLER DAVIS
3 BINGHAM:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. In committing the offense, knowingly created a grave
23 risk of death to one or more persons in addition to the victim of
24 the offense (18 U.S.C. § 3592(c)(5));

25 6. Committed the offense after substantial planning and
26 premeditation to cause the death of a person (18 U.S.C.
27 § 3592(c)(9)); and

28 7. Intentionally killed and attempted to kill more than

1 one person in a single criminal episode (18 U.S.C.
2 § 3592(c)(16)).

3 All pursuant to Title 18, United States Code, Sections 3591
4 and 3592.

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1 DEFENDANT JOHN WILLIAM STINSON

2 As to each of Counts Four and Five, defendant JOHN WILLIAM
3 STINSON:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. Committed the offense after previously being convicted
23 of a federal or state offense resulting in the death of another
24 for which a sentence of life imprisonment was authorized by
25 statute (18 U.S.C. § 3592(c)(3)); and

26 6. Committed the offense after substantial planning and
27 premeditation to cause the death of a person (18 U.S.C.
28 § 3592(c)(9)).

1 All pursuant to Title 18, United States Code, Sections 3591
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1 DEFENDANT RICHARD LLOYD TERFLINGER

2 As to each of Counts Four and Five, defendant RICHARD LLOYD
3 TERFLINGER:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. Committed the offense after previously being convicted
23 of a federal or state offense resulting in the death of another
24 for which a sentence of life imprisonment was authorized by
25 statute (18 U.S.C. § 3592(c)(3));

26 6. Committed the offense after previously being convicted
27 of two or more federal or state offenses, each punishable by a
28 term of imprisonment of more than one year, committed on

1 different occasions, involving the infliction of, or attempted
2 infliction of, serious bodily injury or death upon another person
3 (18 U.S.C. § 3592(c)(4)); and

4 7. Committed the offense after substantial planning and
5 premeditation to cause the death of a person (18 U.S.C.
6 § 3592(c)(9)).

7 All pursuant to Title 18, United States Code, Sections 3591
8 and 3592.

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1 DEFENDANT ROBERT LEE GRIFFIN

2 As to each of Counts Four and Five, defendant ROBERT LEE
3 GRIFFIN:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2)); and

22 5. Committed the offense after substantial planning and
23 premeditation to cause the death of a person (18 U.S.C.
24 § 3592(c)(9)).

25 All pursuant to Title 18, United States Code, Sections 3591
26 and 3592.

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1 DEFENDANT RONALD BOYD SLOCUM

2 As to each of Counts Six, Seven, and Eight, defendant RONALD
3 BOYD SLOCUM:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. In committing the offense, knowingly created a grave
23 risk of death to one or more persons in addition to the victim of
24 the offense (18 U.S.C. § 3592(c)(5));

25 6. Committed the offense after substantial planning and
26 premeditation to cause the death of a person (18 U.S.C.
27 § 3592(c)(9)); and

28 7. Intentionally killed and attempted to kill more than

1 one person in a single criminal episode (18 U.S.C.
2 § 3592(c)(16)).

3 All pursuant to Title 18, United States Code, Sections 3591
4 and 3592.

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1 DEFENDANT DAVID ALLEN CHANCE

2 As to each of Counts Four and Five, defendant DAVID ALLEN
3 CHANCE:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense resulting in the death of another
19 for which a sentence of life imprisonment was authorized by
20 statute (18 U.S.C. § 3592(c)(3)); and

21 5. Committed the offense after substantial planning and
22 premeditation to cause the death of a person (18 U.S.C.
23 § 3592(c)(9)).

24 All pursuant to Title 18, United States Code, Sections 3591
25 and 3592.

1 DEFENDANT MICHAEL PATRICK McELHINEY

2 As to each of Counts Three, Six, Seven, and Eight, defendant
3 MICHAEL PATRICK McELHINEY:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. In committing the offense, knowingly created a grave
23 risk of death to one or more persons in addition to the victim of
24 the offense (18 U.S.C. § 3592(c)(5)) [this special finding does
25 not apply to Count Three];

26 6. Committed the offense after substantial planning and
27 premeditation to cause the death of a person (18 U.S.C.
28 § 3592(c)(9));

1 7. Has previously been convicted of two or more state or
2 federal offenses, punishable by a term of imprisonment of more
3 than one year, committed on different occasions, involving the
4 distribution of a controlled substance (18 U.S.C. § 3592(c)(10));

5 8. Had previously been convicted of violating a provision
6 of Title II or Title III of the Comprehensive Drug Abuse
7 Prevention and Control Act (21 U.S.C. § 801, et seq.) for which a
8 sentence of five or more years may be imposed (18 U.S.C.
9 § 3592(c)(12)); and

10 9. Intentionally killed and attempted to kill more than
11 one person in a single criminal episode (18 U.S.C. § 3592(c)(16))
12 [this special finding does not apply to Count Three or Count
13 Eight].

14 All pursuant to Title 18, United States Code, Sections 3591
15 and 3592.

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1 DEFENDANT DAVID MICHAEL SAHAKIAN

2 As to each of Counts Three, Six, Seven, and Eight, defendant
3 DAVID MICHAEL SAHAKIAN:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. In committing the offense, knowingly created a grave
23 risk of death to one or more persons in addition to the victim of
24 the offense (18 U.S.C. § 3592(c)(5)) [this special finding does
25 not apply to Count Three];

26 6. Committed the offense after substantial planning and
27 premeditation to cause the death of a person (18 U.S.C.
28 § 3592(c)(9)); and

1 7. Intentionally killed and attempted to kill more than
2 one person in a single criminal episode (18 U.S.C. § 3592(c)(16))
3 [this special finding does not apply to Count Three or Count
4 Eight].

5 All pursuant to Title 18, United States Code, Sections 3591
6 and 3592.

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1 DEFENDANT WAYNE BRIDGEWATER

2 As to each of Counts Six, Seven, and Eight, defendant WAYNE
3 BRIDGEWATER:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally killed the victim (18 U.S.C.
7 § 3591(a)(2)(A));

8 3. Intentionally inflicted serious bodily injury that
9 resulted in the death of the victim (18 U.S.C. § 3591(a)(2)(B));

10 4. Intentionally participated in an act, contemplating
11 that the life of a person would be taken or intending that lethal
12 force would be used in connection with a person, other than a
13 participant in the offense, and the victim died as a direct
14 result of the act (18 U.S.C. § 3591(a)(2)(C));

15 5. Intentionally and specifically engaged in an act of
16 violence, knowing that the act created a grave risk of death to a
17 person, other than one of the participants in the offense, such
18 that participation in the act constituted a reckless disregard
19 for human life and the victim died as a direct result of the act
20 (18 U.S.C. § 3591(a)(2)(D));

21 6. Committed the offense after previously being convicted
22 of a federal or state offense punishable by a term of
23 imprisonment of more than one year involving the use or attempted
24 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
25 against another person (18 U.S.C. § 3592(c)(2));

26 7. In committing the offense, knowingly created a grave
27 risk of death to one or more persons in addition to the victim of
28 the offense (18 U.S.C. § 3592(c)(5));

1 8. Committed the offense in an especially heinous, cruel,
2 or depraved manner in that it involved serious physical abuse to
3 the victim (18 U.S.C. § 3592(c)(6)) [this special finding only
4 applies to Count Six];

5 9. Committed the offense after substantial planning and
6 premeditation to cause the death of a person (18 U.S.C.
7 § 3592(c)(9)); and

8 10. Intentionally killed and attempted to kill more than
9 one person in a single criminal episode (18 U.S.C.
10 § 3592(c)(16)) [this special finding does not apply to Count
11 Eight].

12 All pursuant to Title 18, United States Code, Sections 3591
13 and 3592.

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1 DEFENDANT CHRISTOPHER OVERTON GIBSON

2 As to each of Counts Six, Seven, and Eight, defendant
3 CHRISTOPHER OVERTON GIBSON:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of two or more federal or state offenses, each punishable by a
19 term of imprisonment of more than one year, committed on
20 different occasions, involving the infliction of, or attempted
21 infliction of, serious bodily injury or death upon another person
22 (18 U.S.C. § 3592(c)(4));

23 5. In committing the offense, knowingly created a grave
24 risk of death to one or more persons in addition to the victim of
25 the offense (18 U.S.C. § 3592(c)(5));

26 6. Committed the offense after substantial planning and
27 premeditation to cause the death of a person (18 U.S.C.
28 § 3592(c)(9)); and

1 7. Intentionally killed and attempted to kill more than
2 one person in a single criminal episode (18 U.S.C.
3 § 3592(c)(16)).

4 All pursuant to Title 18, United States Code, Sections 3591
5 and 3592.

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1 DEFENDANT GARY JOE LITTRELL

2 As to Count Five, defendant GARY JOE LITTRELL:

3 1. Was more than 18 years old at the time of the
4 offense (18 U.S.C. § 3591(a));

5 2. Intentionally killed the victim (18 U.S.C.
6 § 3591(a)(2)(A));

7 3. Intentionally inflicted serious bodily injury that
8 resulted in the death of the victim (18 U.S.C. § 3591(a)(2)(B));

9 4. Intentionally participated in an act, contemplating
10 that the life of a person would be taken or intending that lethal
11 force would be used in connection with a person, other than a
12 participant in the offense, and the victim died as a direct
13 result of the act (18 U.S.C. § 3591(a)(2)(C));

14 5. Intentionally and specifically engaged in an act of
15 violence, knowing that the act created a grave risk of death to a
16 person, other than one of the participants in the offense, such
17 that participation in the act constituted a reckless disregard
18 for human life and the victim died as a direct result of the act
19 (18 U.S.C. § 3591(a)(2)(D));

20 6. Committed the offense after previously being convicted
21 of a federal or state offense punishable by a term of
22 imprisonment of more than one year involving the use or attempted
23 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
24 against another person (18 U.S.C. § 3592(c)(2));

25 7. Committed the offense after substantial planning and
26 premeditation to cause the death of a person (18 U.S.C.
27 § 3592(c)(9)); and

28 8. Committed the offense against a victim who was

1 particularly vulnerable due to old age, youth, or infirmity (18
2 U.S.C. § 3592(c)(11)).

3 All pursuant to Title 18, United States Code, Sections 3591
4 and 3592.

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1 DEFENDANT ELLIOTT SCOTT GRIZZLE

2 As to Count Five, defendant ELLIOTT SCOTT GRIZZLE:

3 1. Was more than 18 years old at the time of the
4 offense (18 U.S.C. § 3591(a));

5 2. Intentionally participated in an act, contemplating
6 that the life of a person would be taken or intending that lethal
7 force would be used in connection with a person, other than a
8 participant in the offense, and the victim died as a direct
9 result of the act (18 U.S.C. § 3591(a)(2)(C));

10 3. Intentionally and specifically engaged in an act of
11 violence, knowing that the act created a grave risk of death to a
12 person, other than one of the participants in the offense, such
13 that participation in the act constituted a reckless disregard
14 for human life and the victim died as a direct result of the act
15 (18 U.S.C. § 3591(a)(2)(D));

16 4. Committed the offense after substantial planning and
17 premeditation to cause the death of a person (18 U.S.C.
18 § 3592(c)(9)); and

19 5. Committed the offense against a victim who was
20 particularly vulnerable due to old age, youth, or infirmity (18
21 U.S.C. § 3592(c)(11)).

22 All pursuant to Title 18, United States Code, Sections 3591
23 and 3592.

1 DEFENDANT RICHARD SCOTT McINTOSH

2 As to Count Eight, defendant RICHARD SCOTT McINTOSH:

3 1. Was more than 18 years old at the time of the
4 offense (18 U.S.C. § 3591(a));

5 2. Intentionally killed the victim (18 U.S.C.
6 § 3591(a)(2)(A));

7 3. Intentionally inflicted serious bodily injury that
8 resulted in the death of the victim (18 U.S.C. § 3591(a)(2)(B));

9 4. Intentionally participated in an act, contemplating
10 that the life of a person would be taken or intending that lethal
11 force would be used in connection with a person, other than a
12 participant in the offense, and the victim died as a direct
13 result of the act (18 U.S.C. § 3591(a)(2)(C));

14 5. Intentionally and specifically engaged in an act of
15 violence, knowing that the act created a grave risk of death to a
16 person, other than one of the participants in the offense, such
17 that participation in the act constituted a reckless disregard
18 for human life and the victim died as a direct result of the act
19 (18 U.S.C. § 3591(a)(2)(D));

20 6. Committed the offense after previously being convicted
21 of a federal or state offense punishable by a term of
22 imprisonment of more than one year involving the use or attempted
23 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
24 against another person (18 U.S.C. § 3592(c)(2));

25 7. Committed the offense in an especially heinous, cruel,
26 or depraved manner in that it involved serious physical abuse to
27 the victim (18 U.S.C. § 3592(c)(6)); and

28 8. Committed the offense after substantial planning and.

1 premeditation to cause the death of a person (18 U.S.C.
2 § 3592(c)(9)).

3 All pursuant to Title 18, United States Code, Sections 3591
4 and 3592.

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1 DEFENDANT CARL EDGAR KNORR, JR.

2 As to Count Eight, defendant CARL EDGAR KNORR, JR.:

3 1. Was more than 18 years old at the time of the
4 offense (18 U.S.C. § 3591(a));

5 2. Intentionally killed the victim (18 U.S.C.
6 § 3591(a)(2)(A));

7 3. Intentionally inflicted serious bodily injury that
8 resulted in the death of the victim (18 U.S.C. § 3591(a)(2)(B));

9 4. Intentionally participated in an act, contemplating
10 that the life of a person would be taken or intending that lethal
11 force would be used in connection with a person, other than a
12 participant in the offense, and the victim died as a direct
13 result of the act (18 U.S.C. § 3591(a)(2)(C));

14 5. Intentionally and specifically engaged in an act of
15 violence, knowing that the act created a grave risk of death to a
16 person, other than one of the participants in the offense, such
17 that participation in the act constituted a reckless disregard
18 for human life and the victim died as a direct result of the act
19 (18 U.S.C. § 3591(a)(2)(D));

20 6. Committed the offense after previously being convicted
21 of a federal or state offense punishable by a term of
22 imprisonment of more than one year involving the use or attempted
23 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
24 against another person (18 U.S.C. § 3592(c)(2));

25 7. Committed the offense in an especially heinous, cruel,
26 or depraved manner in that it involved serious physical abuse to
27 the victim (18 U.S.C. § 3592(c)(6)); and

28 8. Committed the offense after substantial planning and

1 premeditation to cause the death of a person (18 U.S.C.
2 § 3592(c)(9)).

3 All pursuant to Title 18, United States Code, Sections 3591
4 and 3592.

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1 DEFENDANT JASON LEE SCHWYHART

2 As to each of Counts Six and Seven, defendant JASON LEE
3 SCHWYHART:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally participated in an act, contemplating
7 that the life of a person would be taken or intending that lethal
8 force would be used in connection with a person, other than a
9 participant in the offense, and the victim died as a direct
10 result of the act (18 U.S.C. § 3591(a)(2)(C));

11 3. Intentionally and specifically engaged in an act of
12 violence, knowing that the act created a grave risk of death to a
13 person, other than one of the participants in the offense, such
14 that participation in the act constituted a reckless disregard
15 for human life and the victim died as a direct result of the act
16 (18 U.S.C. § 3591(a)(2)(D));

17 4. Committed the offense after previously being convicted
18 of a federal or state offense punishable by a term of
19 imprisonment of more than one year involving the use or attempted
20 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
21 against another person (18 U.S.C. § 3592(c)(2));

22 5. In committing the offense, knowingly created a grave
23 risk of death to one or more persons in addition to the victim of
24 the offense (18 U.S.C. § 3592(c)(5));

25 6. Committed the offense after substantial planning and
26 premeditation to cause the death of a person (18 U.S.C.
27 § 3592(c)(9)); and

28 7. Intentionally killed and attempted to kill more than

1 one person in a single criminal episode (18 U.S.C.
2 § 3592(c)(16)).

3 All pursuant to Title 18, United States Code, Sections 3591
4 and 3592.

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1 DEFENDANT HENRY MICHAEL HOUSTON

2 As to each of Counts Six, Seven, and Eight, defendant HENRY
3 MICHAEL HOUSTON:

4 1. Was more than 18 years old at the time of the
5 offense (18 U.S.C. § 3591(a));

6 2. Intentionally killed the victim (18 U.S.C.
7 § 3591(a)(2)(A));

8 3. Intentionally inflicted serious bodily injury that
9 resulted in the death of the victim (18 U.S.C. § 3591(a)(2)(B));

10 4. Intentionally participated in an act, contemplating
11 that the life of a person would be taken or intending that lethal
12 force would be used in connection with a person, other than a
13 participant in the offense, and the victim died as a direct
14 result of the act (18 U.S.C. § 3591(a)(2)(C));

15 5. Intentionally and specifically engaged in an act of
16 violence, knowing that the act created a grave risk of death to a
17 person, other than one of the participants in the offense, such
18 that participation in the act constituted a reckless disregard
19 for human life and the victim died as a direct result of the act
20 (18 U.S.C. § 3591(a)(2)(D));

21 6. Committed the offense after previously being convicted
22 of a federal or state offense punishable by a term of
23 imprisonment of more than one year involving the use or attempted
24 or threatened use of a firearm, as defined in 18 U.S.C. § 921,
25 against another person (18 U.S.C. § 3592(c)(2));

26 7. In committing the offense, knowingly created a grave
27 risk of death to one or more persons in addition to the victim of
28 the offense (18 U.S.C. § 3592(c)(5));

1 8. Committed the offense in an especially heinous, cruel,
2 or depraved manner in that it involved serious physical abuse to
3 the victim (18 U.S.C. § 3592(c)(6)) [this special finding only
4 applies to Count Seven];

5 9. Committed the offense after substantial planning and
6 premeditation to cause the death of a person (18 U.S.C.
7 § 3592(c)(9));

8 10. Committed the offense after previously being convicted
9 of violating a provision of Title II or Title III of the
10 Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C.
11 § 801, et seq.) for which a sentence of five or more years may be
12 imposed (18 U.S.C. § 3592(c)(12)); and

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1 11. Intentionally killed and attempted to kill more than
2 one person in a single criminal episode (18 U.S.C.
3 § 3592(c)(16)) [this special finding does not apply to Count
4 Eight].

5 All pursuant to Title 18, United States Code, Sections 3591
6 and 3592.

7 A TRUE BILL

8 
9 ~~For the People~~ /S/ —

10
11 DEBRA WONG YANG
12 United States Attorney

13 

14 THOMAS O'BRIEN
15 Assistant United States Attorney
16 Chief, Criminal Division

17 JOEY L. BLANCH
18 ROBERT C. GANNON
19 GREGORY W. JESSNER
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STEPHEN G. WOLFE
Assistant United States Attorney

EXHIBIT B

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

3 HONORABLE VIRGINIA A. PHILLIPS

4 UNITED STATES DISTRICT JUDGE PRESIDING

5 - - -

6 United States of America,)
7 PLAINTIFF,)
VS.) NO. CR 02-938(A) VAP
8)
9 David Sahakian,)
DEFENDANT,)
-----)

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13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 RIVERSIDE, CALIFORNIA

15 TUESDAY, OCTOBER 7, 2008

16 VOLUME I

17 JURY TRIAL

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21 KATIE E. THIBODEAUX, CSR 9858
22 U.S. Official Court Reporter
23 312 North Spring Street, #436
24 Los Angeles, California 90012

25

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

1 APPEARANCES OF COUNSEL:

2

3 FOR THE PLAINTIFF UNITED STATES OF AMERICA:

4 U.S. DEPARTMENT OF JUSTICE
5 U.S. ATTORNEY'S OFFICE
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1 RIVERSIDE, CALIFORNIA; TUESDAY, OCTOBER 7, 2008

2 A.M. SESSION

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7 (The following proceedings were held outside the
8 presence of the jury:)

9

10 THE COURT: Good morning. We are on the record
11 outside the presence of the jury. While Ms. Dillard goes
12 to check to see if all members of the jury are here, she
13 told me that you had a matter to take up before we bring
14 them in.

15 MR. GREEN: Yes, Judge. For the defense, on
16 Friday, a written motion by the defense was filed for
17 motion for acquittal at the close of all the evidence.
18 At this time, before the jury is instructed, we would
19 like to call the court's attention to that motion and
20 incorporate the arguments made at the close of the
21 government's case at this time.

22 THE COURT: Thank you. And, actually, I had seen
23 that motion, that was on my list to bring up with you
24 this morning.

25 MR. GREEN: Okay.

1 THE COURT: And I meant to do that yesterday, but
2 I wanted to could do it before I instructed the jury to
3 put on the record that having reviewed that as well as
4 the other written motions that you submitted in writing
5 after making it orally, that both motions are denied.

6 The court, having reviewed them, finds that
7 there is sufficient evidence and construing the evidence
8 in favor of the government as the court is required to do
9 in reviewing a motion under Rule 29, that there is
10 sufficient evidence to uphold a conviction. So the
11 motions are denied.

12 MR. GREEN: That is all the defense had, Judge.

13 THE COURT: Thank you. Mr. Akrotirianakis?

14 MR. WOLFE: Thank you, your Honor. In just
15 perusing through the closing instructions, now, at least
16 in the government's copy of the instructions, 46 through
17 49 are duplicated.

18 THE COURT: They are in there twice?

19 MR. AKROTIRIANAKIS: Yes. And then on 50, it
20 refers to each defendant charged in count 1, each
21 defendant charged in count 2, and so on that is probably
22 a leftover.

23 THE COURT: Oh. All right. And those, of course,
24 I would give after argument. Thank you. We will fix
25 that, and I wanted to call your attention to I think it

1 is number 19 which is an instruction that I gave during
2 the trial that I included again. The jury is not to
3 consider in any way other trials that they heard
4 reference to or the outcome of them.

5 All right. Anything else?

6 MR. AKROTIRIANAKIS: Not on behalf of the
7 government, your Honor.

8 MR. GREEN: Not on behalf of the defense, your
9 Honor.

10 THE COURT: Are all members of the jury present?

11 THE CLERK: Yes.

12

13 (The following proceedings were held in the
14 presence of the jury:)

15

16 THE CLERK: CR 02-938(A) VAP, United States of
17 America versus David Michael Sahakian. Counsel, please
18 state your appearances for the record.

19 MR. WOLFE: Good morning, your Honor. Steven
20 Wolfe and Joseph Akrotirianakis for the government.

21 THE COURT: Morning. Thank you.

22 MR. GREEN: Morning, Judge. Joe Green for David
23 Sahakian.

24 MR. SHOSTAK: Morning Judge, Bert Shostak for
25 David Sahakian.

1 THE COURT: Good morning.

2 Ladies and gentlemen of the jury, let the
3 record reflect the presence of all members of the jury.

4 All right. Members of the jury, now that you
5 have heard all the evidence in the case, it is my duty to
6 instruct you on the law that applies to this case. A
7 copy of these instructions will be available to you in
8 the jury room. Each of you will have their own copy for
9 you to consult them.

10 It is your duty to find the facts from all the
11 evidence in this case, and to those facts you will apply
12 the law as I give it to you. You must follow the law as
13 I give it to you whether you agree with it or not, and
14 you must not be influenced by any personal likes or
15 dislikes or opinions, prejudices or sympathy. That means
16 you must decide this case solely on the evidence before
17 you. You will recall that you took an oath promising to
18 do so at the beginning of the case.

19 Following my instructions, you must follow all
20 of them and not single out some and ignore others. They
21 are all equally important. You must not read into these
22 instructions or into anything that I may have said or
23 done any suggestion as to what verdict you should return.
24 That is a matter entirely up to you.

25 Proof beyond a reasonable doubt is proof that

1 leaves you firmly convinced that the defendant is guilty.
2 It is not required that the government prove guilt beyond
3 all possible doubt. A reasonable doubt is a doubt based
4 upon reason and common sense and is not based purely on
5 speculation. It may arise from a careful and impartial
6 consideration of all of the evidence or from a lack of
7 evidence. If, after a careful and impartial
8 consideration of all of the evidence, you are not
9 convinced beyond a reasonable doubt that the defendant is
10 guilty, it is your duty to find the defendant not guilty.

11 On the other hand, if after a careful and
12 impartial consideration of all the evidence, you are
13 convinced -- you are convinced beyond a reasonable doubt
14 that the defendant is guilty, it is your duty to find the
15 defendant guilty.

16 A separate crime is charged against the
17 defendant in each count, and you must decide each count
18 separately. Your verdict on one count should not control
19 your verdict on any other count. You will note that the
20 indictment -- it is the first superseding indictment, but
21 we all refer to it in shorthand as the indictment --
22 charges that the offenses were committed on or about a
23 certain date. The proof need not establish with
24 certainty the exact date of an alleged offense. It is
25 sufficient if the evidence in the case establishes beyond

1 a reasonable doubt that the offense was committed on a
2 date reasonably near the date alleged.

3 During this trial, the parties from time to
4 time have agreed or stipulated to certain facts that have
5 been stated to you. I called your attention to that at
6 the time when it occurred, and you should therefore treat
7 these facts as having been proved.

8 All right. The evidence from which you are to
9 decide what the facts are consists of the following:
10 One, the sworn testimony of any witness; Two, the
11 exhibits which have been received into evidence; and,
12 Three, any facts to which all the lawyers have stipulated
13 or agreed.

14 And, now, in reaching your verdict, you may
15 consider only the testimony and exhibits received into
16 evidence. Certain things are not evidence as I told you
17 at the beginning of the case, and you may not consider
18 them in deciding what the facts are.

19 I will list these for you.

20 Number one, arguments and statements by
21 lawyers are not evidence. The lawyers are not witnesses,
22 and so what they have said in their opening statements,
23 what they will say in their closing arguments and at
24 other times during the trial is intended to help you
25 interpret the evidence, but it is not evidence. So if

1 the facts as you remember them differ from the way the
2 lawyers state them, your memory of them controls.

3 Two, questions and objections by lawyers are
4 not evidence. Attorneys have a duty to their client to
5 object when they believe a question is improper under the
6 rules of evidence, and you should never be influenced by
7 the question, the objection or the court's ruling on it.

8 Three, testimony that has been excluded or
9 stricken or that you have been instructed to disregard is
10 not evidence and must not be considered. In addition,
11 sometimes testimony and exhibits have been received only
12 for a limited purpose. When that occurred, I called your
13 attention to it, and where I have given a limiting
14 instruction, you must follow it.

15 Four, anything that you may have seen or heard
16 when the court was not in session is not evidence. You
17 are to decide this case solely on the evidence received
18 at the trial. As I just said, sometimes evidence has
19 been admitted during the trial for a limited purpose
20 only, and when I have instructed you that an item of
21 evidence or testimony has been admitted for a limited
22 purpose, you must consider it only for that limited
23 purpose and for no other.

24 In deciding the facts of this case, you may
25 have to dedecide which testimony to believe and which

1 testimony not to believe. Now, you may believe
2 everything a witness says or part of it, part of the
3 testimony or none of it. In considering the testimony of
4 any witness, you may take into account the following:
5 One, the opportunity and ability of the witness to see or
6 hear or know the things testified to; Two, the witness'
7 memory; Three, the witness' manner while testifying;
8 Four, the witness' interest in the outcome of the case
9 and any bias or prejudice; Five, whether other evidence
10 contradicted the witness' testimony; Six, the
11 reasonableness of the witness' testimony in light of all
12 of the evidence; and, Seven, any other factors that bear
13 on believability.

14 The weight of the evidence as to a fact does
15 not necessarily depend on the number of witnesses who
16 testified. The defendant has testified, and you should
17 treat this testimony just as you would the testimony of
18 any other witness. Inconsistencies or discrepancies in
19 the testimony of a witness or between the testimony of
20 different witnesses may or may not cause you to
21 disbelieve or discredit such testimony.

22 Two or more persons witnessing an incident or
23 a transaction may simply see or hear it differently.
24 Innocent misrecollection, like failure of recollection is
25 not an uncommon experience. In weighing the effect of a

1 a discrepancy, however, always consider whether it
2 pertains to a matter of importance or an insignificant
3 detail and consider whether the discrepancy results from
4 innocent error or from intentional falsehood.

5 After making your own judgment or assessment
6 concerning the believability of a witness, you can then
7 attach such importance or weight to that testimony, if
8 any, that you feel it deserves, and you will then be in a
9 position to decide whether the government has proven the
10 charges beyond a reasonable doubt.

11 If you find that a witness made an earlier
12 statement that conflicts with his trial testimony, you
13 may consider that fact in deciding how much of his trial
14 testimony, if any, to believe. In making this
15 determination, you may consider whether the witness
16 purposely made a false statement or whether it was an
17 innocent mistake, whether the inconsistency concerns an
18 important fact or whether it had to do with a small
19 detail, whether the witness had an explanation for the
20 inconsistency, and whether that explanation appealed to
21 your common sense.

22 It is exclusively your duty based upon all
23 the evidence and your own good judgment to determine
24 whether that prior statement was inconsistent and if so,
25 how much, if any, weight is to be given to the

1 inconsistent statement in determining whether to believe
2 all or part of the witness' testimony.

3 A witness who is willfully false in
4 one material part of his or her testimony is to be
5 distrusted in others. You may reject the whole testimony
6 of a witness who willfully has testified falsely as to a
7 material point unless from all the evidence, you believe
8 the probability of truth favors his or her testimony in
9 other particulars.

10 There has been evidence introduced at the
11 trial that the parties called as witnesses persons who
12 were using drugs when the events they observed took
13 place. I instruct you that there is nothing improper
14 about calling such witnesses to testify about events
15 within their personal knowledge.

16 On the other hand, their testimony must be
17 examined with greater scrutiny than the testimony of any
18 other witness. The testimony of a witness who is using
19 drugs at the time of the events he is testifying about
20 may be less believable because of the effect of the
21 drugs -- because of the effect the drugs may have on his
22 ability to perceive or relate to -- relate to the events
23 in question.

24 If you decide to accept his testimony after
25 considering it in light of all the evidence in the case,

1 then you may give it whatever weight, if any, you find it
2 deserves.

3 You have heard evidence that witnesses have
4 been convicted of felonies or have lied under oath on
5 prior occasions. You may consider this evidence along
6 with other pertinent evidence in deciding whether or not
7 to believe this witness and how much weight to give to
8 the testimony of that witness.

9 Evidence may be either direct or
10 circumstantial. Direct evidence is direct proof of a
11 fact such as testimony by a witness about what that
12 witness personally saw or heard or did. Circumstantial
13 evidence is indirect evidence. That is, it is proof of
14 one or more facts from which one can find another fact.
15 You are to consider both direct and circumstantial
16 evidence. The law permits you to give equal weight to
17 both, but it is for you to decide how much weight to give
18 to any evidence.

19 You are here only to determine whether the
20 defendant is guilty or not guilty of the charges in the
21 first superseding indictment or the indictment.

22 Your determination must be made only from the
23 evidence in this case. The defendant is not on trial for
24 any conduct or offense not charged in the indictment.
25 You should consider evidence about any acts, statements

1 and intentions of others or evidence about other acts of
2 the defendant only as they relate to the charges against
3 this defendant.

4 During the trial, there were instances when I
5 ordered that evidence be stricken from the record and
6 that you disregard or ignore that evidence. That means
7 that when you are deciding the case, you are not to
8 consider any evidence which I told you to disregard.

9 You heard references to other trials of other
10 defendants, for example, the witness Allan Benton
11 testified in the trials of other men indicted in this
12 case. You are not to speculate on or consider in any way
13 those other trials or their outcome.

14 And you heard testimony from witnesses who may
15 receive and may have received benefits or favored
16 treatment from the government in connection with this
17 case. For these reasons, in evaluating these witnesses'
18 testimony, you should consider the extent to which or
19 whether such witnesses' testimony may have been
20 influenced by this. In addition, you should examine
21 these witnesses' testimony with greater caution than that
22 of other witnesses.

23 During the trial, you listened to a
24 tape-recording that has been received into evidence, and
25 when you listened to it, each of you was given a

1 transcript of the recording to help you identify speakers
2 and as a guide to help you listen to the tape. However,
3 bear in mind that the tape-recording is the evidence, not
4 the transcript, and if you heard something different as
5 you listened to the tape-recording from what appears in
6 the transcript, what you heard is controlling.

7 You have heard testimony from persons who
8 because of their education or experience are permitted to
9 state opinions and the reasons for their opinions.
10 Opinion testimony should be judged just like any other
11 testimony. You may accept it or reject it and give it as
12 much weight as you think it deserves considering the
13 witness' education and experience, the reasons given for
14 the opinion and all the other evidence in the case.

15 Lay jurors such as yourselves are entitled to
16 compare handwriting and to arrive at a conclusion as to
17 the person who produced the disputed document based on
18 the similarity of the handwriting contained in the
19 documents.

20 All right. I am about to now begin explaining
21 the law pertaining to the charges contained in the
22 indictment. Let me advise you in advance that these
23 instructions are lengthy, especially as to count 1, the
24 Rico count. And, although they are lengthy, of course,
25 they are necessary. We have made every effort to keep

1 the instructions as short as possible and to simplify
2 them, and I am going to, as I have already said, I am
3 going to read them to you now, but you will have a set of
4 the instructions to take with you and consult during your
5 deliberations. You will also have with you a verdict
6 form. And I am going to ask you to close your notebooks
7 because the original set of preliminary instructions that
8 we gave you may be slightly different than the ones that
9 I am going to read to you now.

10 The verdict form that you will get has both a
11 general and special verdicts as to one of the counts, and
12 that may help you organize your deliberations. The
13 instructions for count 1 are longer than for the other
14 counts, in part because as to count 1, I will be defining
15 and explaining for you a number of terms and concepts
16 relating to the racketeering laws, and many of the
17 instructions as to count 1 also apply to the other counts
18 in the indictment relating to racketeering such as count
19 2 which charges the Rico conspiracy and counts 3, 6 and 7
20 which charged the three VICAR counts.

21 Rather than repeating the racketeering-related
22 instructions every time that they may apply I will
23 sometimes simply state to you that I have instructed you
24 earlier on the applicable law on that subject, and I will
25 ask you to apply the earlier instructions.

1 This is a criminal case brought by the
2 United States government, called the government in these
3 instructions. The government charges the defendant David
4 Michael Sahakian as follows: Count 1, the RICO charge.
5 Beginning on a date unknown until at least July 25, 2002,
6 the defendant did knowingly and unlawfully conduct and
7 participate, directly and indirectly in the conduct of
8 the affairs of an enterprise through a pattern of
9 racketeering activity consisting of a number of
10 racketeering acts alleged in count 1 and that the
11 enterprise engaged in and its activities affected
12 interstate commerce in violation of Title 18, United
13 States Code, section 1962(c).

14 Count 2, the conspiracy charge. Beginning on
15 a date unknown until at least July 25, 2002, within the
16 Central District of California and elsewhere, defendant
17 David Michael Sahakian and others unlawfully, willfully
18 and knowingly combined, conspired, confederated and
19 agreed together and with each other to violate Title 18,
20 United States Code, section 1962(d), that is to conduct
21 and participate, directly and indirectly in the conduct
22 of the affairs of the Aryan Brotherhood enterprise
23 through a pattern of racketeering activity consisting of
24 multiple acts involving murder in violation of various
25 state laws and distribution of controlled substances

1 including heroin, methamphetamine and cocaine. The
2 defendant agreed that a conspirator would commit at least
3 two acts of racketeering in the conduct of the affairs of
4 the enterprise.

5 Count 3, murder charge. On or about
6 August 25, 1995, within the Central District of
7 California and elsewhere, defendant David Michael
8 Sahakian and others unlawfully, willfully, deliberately,
9 maliciously and with premeditation and malice
10 aforethought did aid, abet, advise, encourage and
11 otherwise participate in the murder of Charles Leger in
12 violation of Title 18, United States Code, sections 2(a),
13 and 1111 for the purpose of gaining entrance to or
14 maintaining and increasing his position in the Aryan
15 Brotherhood, an enterprise engaged in racketeering
16 activity in violation of Title 18, United States Code,
17 section 1959(a)(1).

18 Count 6, murder charge. On or about
19 August 28, 1997, within the Central District of
20 California and elsewhere, defendant David Michael
21 Sahakian and others unlawfully, deliberately, maliciously
22 and with premeditation and malice aforethought did aid,
23 abet, advise, encourage and otherwise participate in the
24 murder of Frank Joyner in violation of Title 18, United
25 States Code, sections 2(a) and 1111 for the purpose of

1 gaining entrance to or maintaining and increasing his
2 position in the Aryan Brotherhood, an enterprise engaged
3 in racketeering activity in violation of Title 18, United
4 States Code, section 1959(a)(1).

5 Count 7, murder charge. On or about
6 August 28, 1997, in the Central District of California
7 and elsewhere, defendant David Michael Sahakian and
8 others unlawfully, willfully, deliberately, maliciously
9 and with premeditation and malice aforethought did aid,
10 abet, advise, encourage and otherwise participate in the
11 murder of Abdul Salaam in violation of Title 18, United
12 States Code, sections 2(a) and 1111 for the purpose of
13 gaining entrance to or maintaining and increasing his
14 position in the Aryan Brotherhood, an enterprise engaged
15 in racketeering activity in violation of Title 18, United
16 States Code, section 1959(a)(1).

17 The charges against the defendant are also
18 contained in the indictment. The indictment is simply
19 the description of the charges made by the government
20 against the defendant. It is not evidence of anything.
21 The defendant has pleaded not guilty to the charges and
22 is presumed innocent unless and until proved guilty
23 beyond a reasonable doubt. The defendant has the right
24 to remain silent and never has to prove innocence or
25 present any evidence.

1 All right. Let me first turn to the RICO
2 substantive offense that is charged in count 1. I will
3 start by summarizing the allegations in the indictment,
4 and then I will quote the language of the applicable
5 statute, and then I will instruct you on the elements of
6 the crime.

7 Count 1 of the indictment charges that from a
8 date unknown until at least July 25, 2002, the defendant
9 did knowingly and unlawfully conduct and participate
10 directly and indirectly in the conduct of the affairs of
11 an enterprise through a pattern of racketeering activity
12 consisting of a number of racketeering acts alleged in
13 count 1 and that the enterprise engaged in and its
14 activities affected interstate commerce in violation of
15 Title 18, United States Code, section 1962(c).

16 The indictment further alleges that the
17 enterprise is a criminal organization known as the Aryan
18 Brotherhood including its members and associates, that
19 the Aryan Brotherhood engaged in racketeering activity
20 including murder, attempted murder, conspiracy to commit
21 murder, extortion, robbery and narcotics trafficking,
22 that the Aryan Brotherhood began on an unknown date and
23 continued until at least July 25, 2002, that the Aryan
24 Brotherhood and its activities affected interstate
25 commerce, that the defendant was associated with the

1 Aryan Brotherhood and that the defendant was either a
2 leader who directed the activities of others in the Aryan
3 Brotherhood or a member of the enterprise who
4 participated in the activities under the direction of the
5 leaders.

6 Title 18, United States Code, section
7 1962(c) is commonly referred to as the RICO statute. The
8 relevant provision of the RICO statute, 18 United States
9 Code, section 1962(c) provides as follows: It shall be
10 unlawful for any person employed by or associated with
11 any enterprise engaged in or the activities of which
12 effect interstate commerce to conduct or participate
13 directly or indirectly in the conduct of such
14 enterprise's affairs through a pattern of racketeering
15 activity or collection of unlawful debt.

16 I will now instruct you on the elements of the
17 RICO substantive offense in count 1. In order to convict
18 the defendant of that offense, the government must prove
19 all of the following five elements beyond a reasonable
20 doubt: One, an enterprise as described in the indictment
21 existed at or about the time alleged in the indictment;
22 Two, the enterprise or its activities affected interstate
23 commerce; Three, the defendant was associated with the
24 enterprise; Four, the defendant knowingly conducted or
25 participated, either directly or indirectly, in the

1 conduct of the affairs of the enterprise; and, Five, the
2 defendant knowingly participated in the conduct of the
3 affairs of the enterprise through a pattern of
4 racketeering activity as described in the indictment.
5 That is, that through the commission of at least two of
6 the charged racketeering acts within 10 years of each
7 other or through causing or aiding and abetting the
8 commission of two such racketeering acts.

9 All right. Now, I am going to go through each
10 of those five elements for you.

11 First, to prove the RICO substantive violation
12 charged in Count 1, the government must prove beyond a
13 reasonable doubt the existence of an enterprise. That is
14 the first element of count 1. As used in these
15 instructions, the term enterprise includes any
16 individual, partnership, corporation, association or
17 other legal entity and any union or group of individuals
18 associated in fact although not a legal entity.

19 18 United States Code, section 1961, paragraph
20 4. The term enterprise as used in these instructions may
21 therefore include a group of people associated in fact
22 even though this association is not recognized as a legal
23 entity. Thus, an enterprise need not be a formal
24 business entity such as a corporation but may be merely
25 an informal association of individuals. A group or

1 association of people can be an enterprise if these
2 individuals have associated together for a common purpose
3 of engaging in a conduct.

4 Such an association of persons may be
5 established by evidence showing an ongoing organization,
6 formal or informal and by evidence that the people making
7 up the association functioned as a continuing unit.

8 Therefore, in order to establish the existence
9 of such an enterprise, the government must prove that:
10 One, there is an ongoing organization with some sort of
11 framework for making and carrying out decisions; Two, the
12 various members and associates of the association
13 function as a continuing unit to achieve a common
14 purpose; and, Three, the enterprise is separate and apart
15 from the pattern of activity in which it engages.

16 In other words, it has a separate existence
17 from the pattern of racketeering acts. Regarding
18 organization, it is not necessary that the enterprise
19 have any particular or formal structure, but it must have
20 sufficient organization that its members function and
21 operate in a coordinated manner in order to carry out the
22 alleged common purpose or purposes of the enterprise.

23 Continuing membership exists even when the
24 membership changes by adding or losing individuals during
25 the course of its existence. Therefore, such an

1 association of individuals during the course --
2 therefore, such an association of individuals may retain
3 its status as an enterprise even though the membership of
4 the association changes by adding or losing individuals
5 during the course of its existence. Separate existence
6 means that the enterprise has an existence beyond that
7 which is necessary merely to commit each of the charged
8 racketeering acts, that is, that the organization
9 continued to exist in the intervals between the alleged
10 racketeering activities.

11 It is not necessary, however, to find that the
12 enterprise had some function wholly unrelated to the
13 racketeering activity. You may consider proof of the
14 racketeering acts to determine whether the evidence
15 established the existence of the charged enterprise. The
16 government is not required to prove each and every
17 allegation about the enterprise or the manner in which
18 the enterprise operated. All right.

19 The second element of count 1, engaging in or
20 the effect on interstate commerce. As I stated
21 previously, the government must prove beyond a reasonable
22 doubt that the RICO enterprise engaged in or its
23 activities affected interstate commerce. Interstate
24 commerce means trade or conducting business or travel
25 between one state and another state or the District of

1 Columbia. Therefore, interstate commerce may include the
2 movement of money, goods, services or persons from
3 one state to another state or the District of Columbia.
4 This may include among other matters the purchase or sale
5 of goods or supplies from outside the state in which the
6 enterprise was located, the use of interstate mail or
7 wire facilities or the copying of any of those things.

8 An enterprise is generally engaged in
9 interstate commerce when it is itself directly engaged in
10 the production, distribution or acquisition of goods and
11 services in interstate commerce. If you find that the
12 evidence is sufficient to prove that the enterprise was
13 engaged in interstate commerce, the required nexus to
14 interstate commerce is established, and, therefore, the
15 government is not required to prove the alternative, that
16 the activities of the enterprise affected interstate
17 commerce.

18 In other words, this can be proved one of two
19 ways. Regarding that alternative method of satisfying
20 this element, to establish the requisite effect on
21 interstate commerce, the government is not required to
22 prove a significant or substantial effect on interstate
23 commerce but rather a minimal effect on interstate
24 commerce is sufficient. It is not necessary for the
25 government to prove that the individual racketeering acts

1 themselves affected interstate commerce. Rather, it is
2 the enterprise and their activities considered in their
3 entirety that must be shown to have that effect.

4 On the other hand, this effect on interstate
5 commerce may be established through the effect caused by
6 the individual racketeering acts. Moreover, it is not
7 necessary for the government to prove that the defendant
8 knew that the enterprise would affect interstate
9 commerce, that the defendant intended to affect
10 interstate commerce or that each defendant engaged in or
11 his activities affected interstate commerce.

12 The government in this case contends that
13 the enterprise in this case was engaged in or affected
14 interstate commerce in the following ways among others:
15 One, interstate telephone calls made by members and
16 associates of the Aryan Brotherhood; Two, interstate
17 telephone calls made by prison officials and other law
18 enforcement officials as a result of the activities of
19 the Aryan Brotherhood; Three, interstate travel of
20 members and associates of the Aryan Brotherhood while in
21 custody or otherwise; Four, interstate travel of prison
22 officials and other law enforcement officials as a result
23 of the activities of the Aryan Brotherhood; Five,
24 interstate mailings by members and associates of the
25 interstate -- excuse me -- Five, interstate mailings by

1 members and associates of the Aryan Brotherhood; Six,
2 interstate mailings by prison officials or other law
3 enforcement officials as a result of the activities of
4 the Aryan Brotherhood.

5 The government is not required to prove all
6 the circumstances outlined above. To satisfy this
7 element, the government need only prove beyond a
8 reasonable doubt either that the activities of the
9 enterprise considered in their entirety had some minimal
10 effect on interstate commerce or that the enterprise was
11 engaged in interstate commerce.

12 The third element of count 1, the defendant
13 was employed by or associated with the enterprise. The
14 third element the government must prove beyond a
15 reasonable doubt is that the defendant was employed by or
16 associated with the enterprise about which I have already
17 instructed you. The government need not prove both.
18 Either one is sufficient to establish this element.

19 The term "employed by" should be given its
20 common, plain meaning. Thus, a person is employed by an
21 enterprise when, for example, he is on the payroll of the
22 enterprise and performs services for the enterprise,
23 holds a position in the enterprise or has an ownership
24 interest in the enterprise. "Associated with" should
25 also be given its plain meaning, that is to join often in

1 a loose relationship as a partner, fellow worker,
2 colleague, friend, companion or ally to join or connect
3 with one another.

4 Therefore, a person is associated with an
5 enterprise when, for example, he joins with other members
6 of the enterprise and he knowingly aids or furthers the
7 activities of the enterprise or he conducts business with
8 or through the enterprise. It is not required that the
9 defendant have been provided by or associated with the
10 enterprise for the entire time that the enterprise
11 existed.

12 The government also is not required to prove
13 that the defendant had a formal position in the
14 enterprise or participated in all of the activities of
15 the enterprise or had full knowledge of all of the
16 activities of the enterprise or knew about the
17 participation of all of the other members of the
18 enterprise, but, rather, it is sufficient that the
19 government prove beyond a reasonable doubt that at
20 sometime during the existence of the enterprise, as
21 alleged in the indictment, the defendant was employed by
22 or associated with the enterprise within the meaning of
23 those terms as I have just explained and that he knew of
24 the general nature of the enterprise and that the
25 enterprise extended beyond his own rule in the

1 enterprise.

2 All right. The fourth element of count 1 is
3 conduct or participate in the conduct of the affairs of
4 the enterprise. The fourth element that the government
5 must prove beyond a reasonable doubt is that the
6 defendant conducted or participated directly or
7 indirectly in the conduct of the affairs of the
8 enterprise. Such proof may include evidence that the
9 defendant intentionally performed acts or functions or
10 duties which are necessary to or helpful in the operation
11 of the enterprise. Thus, the government must prove that
12 the defendant participated in the operation or management
13 of the enterprise itself or that he had some part in
14 directing the enterprise's affairs. However, the
15 government need not prove that the defendant exercised
16 significant control over or within the enterprise or at
17 that he had a formal position in the enterprise or that
18 he had primary responsibility for the enterprise's
19 affairs.

20 Rather, an enterprise is operated not just by
21 upper management but also by lower rung participants in
22 the enterprise who are under the direction of upper
23 management or carry out upper management's orders.
24 Therefore, you may find guilty all who participate in the
25 conduct of the enterprise whether they are generals or

1 foot soldiers. An enterprise also might be operated or
2 managed by one who exerts control over the enterprise.

3 The fifth element of count 1, pattern of
4 racketeering activity. The fifth element the government
5 must prove beyond a reasonable doubt is that the
6 defendant engaged in a pattern of racketeering activity.
7 As I have already stated, the indictment charges that the
8 defendant and others in the Aryan Brotherhood enterprise
9 committed numerous murder-related racketeering acts
10 including murder, attempted murder, aiding and abetting
11 murder and attempted murder and conspiracy to commit
12 murder.

13 To establish a pattern of racketeering
14 activity as alleged in count 1 of the indictment, the
15 government must prove three elements beyond a reasonable
16 doubt: One, the defendant intentionally committed or
17 caused or aided and abetted the commission of two or more
18 of the racketeering acts alleged in the indictment. And
19 these two or more racketeering acts must have been
20 committed within 10 years of each other. Your verdict
21 must be unanimous as to which specific racketeering acts
22 you find that the defendant committed, caused or aided
23 and abetted, and, shortly, I will instruct you on the
24 elements regarding each of the charged racketeering acts.

25 Two, the racketeering acts are related, that

1 is they have the same or similar purposes, results
2 participants, victims or methods of commission or are
3 otherwise interrelated by distinguishing characteristics
4 and are not merely isolated events. Two racketeering
5 acts may be related even they are dissimilar or not
6 directly related to each other provided that the
7 racketeering acts are related to the same enterprise.
8 For example, the requisite relationship between the RICO
9 enterprise and a predicate racketeering act may be
10 established by evidence that the defendant was unable to
11 commit the racketeering act solely by virtue of his
12 position in the enterprise or involvement in or control
13 of its affairs or by evidence that the racketeering act
14 benefited the enterprise or by evidence the racketeering
15 act promoted or furthered the purpose of the enterprise.

16 Third, the racketeering acts themselves either
17 exextended over a substantial period of time or they
18 posed a continued criminal activity. The government need
19 not prove such a threat of continuity by any mathematical
20 formula or by any particular proof but rather may prove
21 it in a variety of ways. For example, the threat of
22 continued unlawful activity may be established when the
23 evidence shows that the racketeering acts are part of a
24 long term association that exists for criminal purposes
25 or when the racketeering acts are shown to be the regular

1 way of conducting the affairs of the enterprise.

2 Moreover, in determining whether the
3 government has proven the threat of continued unlawful
4 activity, you are not limited to consideration of the
5 specific racketeering acts charged against the defendant.
6 Rather, in addition to considering such acts, you may
7 also consider the nature of the enterprise and other
8 unlawful activities of the enterprise and its members
9 viewed in their entirety including both charged and
10 uncharged unlawful activities.

11 All right. As I just instructed you, to
12 convict the defendant of the RICO charge, you must find
13 that the defendant committed two racketeering acts within
14 10 years as part of a pattern of racketeering activity
15 and, shortly, I will provide you with instructions
16 regarding those racketeering acts, but let me first
17 provide you with some privilege instructions.

18 First, you will note from the numbering of the
19 racketeering acts in the indictment that over 40 such
20 racketeering acts have been alleged, but in this trial,
21 however, only six of those racketeering acts are before
22 you and these instructions, therefore, relate to only
23 those six racketeering acts.

24 Second, five of the six racketeering acts
25 charged in count 1 that are before you involve murder,

1 aiding and abetting murder, attempted murder and
2 conspiracy to commit murder. Because RICO requires the
3 racketeering acts of murder to be chargeable under state
4 law, the elements of those racketeering acts are defined
5 by state law. In this case, the laws of two different
6 states are involved: Kansas and Illinois. Although the
7 elements of the various murder-related crimes involved in
8 the racketeering acts are quite similar from state to
9 state, the instructions must be faithful to the laws of
10 each state in question. The other racketeering act
11 before you which does not involve murder involves
12 conspiracy under federal law to distribute a controlled
13 substance. The elements of this alleged racketeering act
14 will also be given to you.

15 Third, you will notice that some of the
16 racketeering acts have two subparts, subparts (a) and (b)
17 and that each subpart alleges a separate crime. For
18 example, in racketeering act 10, subpart (a) alleges that
19 defendant participated in a conspiracy to murder Joel
20 Burkett, and subpart (b) alleges that defendant attempted
21 to murder Joel Burkett. This two-part charging method is
22 found in three of the six racketeering acts that are
23 before you. In each of these, subpart (a) alleges the
24 crime of conspiracy to commit murder, and subpart (b)
25 charges the substantive murder-related offense such as

1 murder or attempted murder. Although each of these
2 two-part racketeering acts alleged two separate crimes,
3 the two crimes constitute only one racketeering act, not
4 two.

5 To prove a racketeering act that involves
6 subparts (a) and (b), the government need only establish
7 one of the crimes alleged is that racketeering act,
8 subpart (a) or (b), and not both.

9 Third, although to convict the defendant you
10 must find beyond a reasonable doubt that the defendant
11 committed two racketeering acts within 10 years as part
12 of a pattern of racketeering, you do not have to find
13 that the defendant committed those racketeering acts
14 personally or directly. As I will explain, the defendant
15 may be held responsible for the commission of a criminal
16 act if he has committed the act personally and directly
17 or if he has caused, aided, abetted, counseled,
18 commanded, induced or procured the commission of the
19 criminal act.

20 This is sometimes called aiding and abetting
21 liability.

22 There are also circumstances where a defendant
23 can be held criminally liable for a crime committed
24 pursuant to conspiracy of which he is a member. This is
25 sometimes called co-conspirator liability. I will

1 provide you with further instructions in a moment on
2 those legal principles, but it is useful for you to be
3 familiar with these concepts at the outset. With those
4 principles in mind, then, we will turn to the elements of
5 the racketeering acts themselves, and as I told you
6 earlier as part of the special verdict form you will be
7 asked to complete, you will be provided with a listing of
8 the racketeering acts, the victims and the charges.

9 Racketeering act 10 regarding Joel Burkett. I
10 will now instruct you on the elements of racketeering act
11 10. Racketeering act 10, as I just said, has
12 two subparts, (a) and (b), and to find that a defendant
13 committed a racketeering act, the government must prove
14 beyond a reasonable doubt that the defendant committed
15 either the crime charged in subpart (a) or the crime
16 charged in subpart (b), but not both.

17 Subpart (a) of racketeering act 10 alleges
18 that beginning on a date unknown to the grand jury and
19 continuing until at least March 1, 1992 within the
20 Central District of California and elsewhere, defendant
21 David Michael Sahakian and others conspired to murder
22 Joel Burkett, and a co-conspirator committed an overt act
23 in furtherance of the conspiracy in violation of Illinois
24 Criminal Code, sections 8-2 and 9-1. Illinois Criminal
25 Code, section 8-2 provides a person commits conspiracy

1 when, with the intent that an offense be committed, he
2 agrees with another to the commission of that offense.
3 No person may be convicted of conspiracy to commit an
4 offense unless an act in furtherance of such agreement is
5 alleged and proved to have been committed by him or a
6 co-conspirator.

7 Illinois Criminal Code, section 9-1 provides
8 that a person who kills another individual without lawful
9 justification commits first degree murder if, in
10 performing the acts which cause the death, one, he either
11 intends to kill or do great bodily harm to that
12 individual or another, or knows that such acts will cause
13 death to that individual or another.

14 In order to find defendant Sahakian guilty of
15 subpart (a) of racketeering act 10, the defendant must
16 prove -- excuse me. The government must prove the
17 following elements beyond a reasonable doubt: One, on or
18 about the dates in the indictment, two, defendant
19 Sahakian agreed with others to commit the first degree
20 murder of Joel Burkett. Three, defendant Sahakian made
21 that agreement with the intent of committing the first
22 degree murder of Joel Burkett. And, four, an act in
23 furtherance of the agreement was performed in the state
24 of Illinois by any party to the agreement.

25 A person commits the offense of first degree

1 murder when he kills an individual. If, in performing
2 the acts which caused the death, he intends to kill or
3 cause great bodily harm to that individual, an agreement
4 may be implied by the conduct of the parties although
5 they act separately or by different means and did not
6 come together or enter into an express agreement.

7 Subpart (b) of racketeering act 10. Subpart
8 (b) of racketeering act 10 alleges that on or about
9 March 1, 1992 within the Central District of California
10 and elsewhere, defendant David Michael Sahakian and
11 others unlawfully, willfully, deliberately, maliciously
12 and with premeditation and malice aforethought, did aid,
13 abet, advise, encourage and otherwise willfully
14 participate in the attempted murder of Joel Burkett in
15 violation of Illinois Criminal Code, sections 5-2, 8-4
16 and 9-1.

17 Illinois Criminal Code, section 9-1 provides
18 that a person who kills another individual without lawful
19 justification commits first degree murder if in
20 performing the acts which caused the death, one, he
21 either intends to kill or do great bodily harm to that
22 individual or another or knows that such acts will cause
23 death to that individual or another.

24 Illinois Criminal Code, section 5-2 provides
25 that a person is legally accountable for the conduct of

1 another when, C, either before or during the commission
2 of an offense and with the intent to promote or
3 facilitate such commission, he solicits, aids, abets,
4 agrees or attempts to aid such other in the planning or
5 commission of the offense. And Illinois Criminal Code,
6 section 8-4 provides that a person commits an attempt
7 when with intent to commit a specific offense, he does
8 any act which constitutes a substantial step toward the
9 commission of that offense.

10 In order to find defendant Sahakian guilty of
11 subpart (b) of racketeering act 10, the government must
12 prove the following elements beyond a reasonable doubt:
13 One, on or about the date alleged in the indictment in
14 the state of Illinois, two, someone attempted to commit
15 the first degree murder of Joel Burkett, that is someone
16 attempted -- excuse me -- someone who intended to kill or
17 do great bodily harm to Joel Burkett did an act which
18 constituted a substantial step toward the killing of Joel
19 Burkett. The killing need not have been accomplished.
20 Three, before the attempted first degree murder of Joel
21 Burkett, defendant Sahakian knowingly solicited or aided
22 and abetted the planning or commission of that offense or
23 attempted to do so.

24 Four, defendant Sahakian acted before the
25 commission of that offense with the intent to promote or

1 facilitate the commission of that offense. Actual
2 physical presence at the commission of a crime is not a
3 requirement for legal responsibility. Intent to promote
4 or facilitate the commission of an offense may be shown
5 by evidence that the defendant shared a criminal intent
6 of the principal or evidence that there was a common
7 criminal design.

8 Racketeering act 20. Regarding Jimmy Lee
9 Inman. I will now instruct you on the elements of
10 racketeering act 20. Racketeering act 20 has
11 two subparts, (a) and (b). To find that a defendant
12 committed a racketeering act, the government must prove
13 beyond a reasonable doubt that the defendant committed
14 either the crime charged in subpart (a) or the crime
15 charged in subpart (b) but not both.

16 Subpart (a) of racketeering act 20. Subpart
17 (a) of racketeering act 20 alleges that beginning on a
18 date unknown to the grand jury and continuing until at
19 least September 30, 1993 within the Central District of
20 California and elsewhere, defendant David Michael
21 Sahakian and others conspired to murder Jimmy Lee Inman
22 and a co-conspirator committed a overt act in furtherance
23 of the conspiracy in violation of Illinois Criminal Code,
24 sections 8-2 and 9-1.

25 Illinois Criminal Code, section 8-2 provides a

1 person commits conspiracy when, with the intent that an
2 offense be committed, he agrees with another to the
3 commission of that offense. No person may be convicted
4 of conspiracy to commit an offense unless an act in
5 furtherance of such agreement is alleged and proved to
6 have been committed by him or a co-conspirator.

7 And Illinois Criminal Code, section 9-1
8 provides that a person who kills another individual
9 without substantial justification commits first degree
10 murder if, in performing the acts which cause the death,
11 one, he either intends to kill or do great bodily harm to
12 that individual or another or knows that such acts will
13 cause death to that individual or another.

14 So in order to find defendant Sahakian guilty
15 of subpart (a) of racketeering act 20, the government
16 must prove the following elements beyond a reasonable
17 doubt: One, on or about the dates in the indictment;
18 Two, defendant Sahakian agreed with others to commit the
19 first degree murder of Jimmy Lee Inman; Three, defendant
20 Sahakian made that agreement with the intent of
21 committing the first degree murder of Jimmy Lee Inman;
22 and, Four, an act in furtherance of that agreement was
23 performed in the State of Illinois by any party to the
24 agreement.

25 A person commits the offense of first degree

1 murder when he kills an individual if, in performing the
2 acts which caused the death, he intends to kill or cause
3 great bodily harm to that individual. An agreement may
4 be implied from the conduct of the parties although they
5 acted separately or by different means and did not come
6 together or enter into an express agreement.

7 Subpart (b) of racketeering act 20. Subpart
8 (b) of racketeering act 20 alleges that on or about
9 September 30, 1993, within the Central District of
10 California and elsewhere, defendant David Michael
11 Sahakian and others unlawfully, willfully, deliberately,
12 maliciously and with premeditation and malice
13 aforethought did aid, abet, advise, encourage and
14 otherwise willfully participate in the attempted murder
15 of Jimmy Lee Inman in violation of Criminal Code,
16 sections 5-2, 8-4 and 9-1.

17 Illinois Criminal Code, section 9-1 provides
18 that a person who kills another individual without lawful
19 justification commits first degree murder if, in
20 performing the acts which caused the death, one, he
21 either intends to kill or to do great bodily harm to that
22 individual or another or knows that such act will cause
23 death to that individual or another. Illinois Criminal
24 Code, section 5-2 provides that a person is legally
25 accountable for the conduct of another when, C, either

1 before or during the commission of an offense and with
2 the intent to promote or facilitate such commission, he
3 solicits, aids, abets, agrees or attempts to aid such
4 other in the planning or commission of the offense.

5 And Illinois Criminal Code, section 8-4
6 provides that a person commits an attempt when with
7 intent to commit a specific offense, he does any act
8 which constitutes a substantial step towards the
9 commission of that offense.

10 So, in order to find defendant Sahakian
11 guilty of sub part (b) of racketeering act 20, the
12 government must prove the following elements beyond a
13 reasonable doubt: One, on or about the date alleged in
14 the indictment in the State of Illinois; two, someone
15 attempted to commit the first degree murder of Jimmy Lee
16 Inman, that is someone who intended to kill or do great
17 bodily harm to Jimmy Lee Inman did an act which
18 constituted a substantial step toward the killing of
19 Jimmy Lee Inman. The killing need not have been
20 accomplished. Three, before the attempted first degree
21 murder of Jimmy Lee Inman, defendant Sahakian knowingly
22 solicited or aided and abetted the planning or commission
23 of that offense or attempted to do so.

24 Four, defendant Sahakian acted before the
25 commission of that offense with the intent to promote or

1 facilitate the commission of that offense. Actual
2 physical presence at the commission of the crime is not a
3 requirement for legal responsibility. Intent to promote
4 or facilitate the commission of an offense may be shown
5 by evidence that the defendant shared a criminal intent
6 of the principal or evidence that there was a common
7 criminal design.

8 Racketeering act 29, re Charles Leger. I
9 will now instruct you on the elements of racketeering act
10 29. Racketeering act 29 has two subparts, (a) and (b).
11 As I said earlier, to find that a defendant committed a
12 racketeering act the government must prove beyond a
13 reasonable doubt that the defendant committed either the
14 crime charged in subpart (a) or the crime charged in
15 subpart (b) and not both.

16 Subpart (a) of racketeering act 29. Subpart
17 (a) of racketeering act 29 alleges that beginning on a
18 date unknown to the grand jury, and continuing until
19 August 25, 1995, within the central District of
20 California and elsewhere, defendant David Michael
21 Sahakian and others conspired to murder Charles Leger,
22 and a co-conspirator committed an overt act in
23 furtherance of the conspiracy in violation of Kansas
24 Criminal Code, sections 21-3302 and 21-3401.

25 Kansas Criminal Code section 21-3302 provides

1 that a conspiracy is an agreement with another person to
2 commit a crime or to assist another to commit a crime.
3 No person may be convicted of a conspiracy unless an
4 overt act in furtherance of such conspiracy is alleged
5 and proved to have been committed by him or by a
6 co-conspirator.

7 Kansas Criminal Code, section 21-3401 provides
8 that murder in the first degree is the killing of a human
9 being committed, A, intentionally and with premeditation.

10 In order to find defendant Sahakian guilty of
11 subpart (a) of racketeering act 29, the government must
12 prove the following elements beyond a reasonable doubt:
13 One, on or about the date alleged in the indictment; Two,
14 defendant Sahakian agreed with others to commit the first
15 degree murder of Charles Leger, that is, they agreed to
16 kill Leger intentionally and with premeditation. Three,
17 defendant Sahakian intended that the first degree murder
18 of Charles Leger be committed; and, Four, a conspirator
19 committed an overt act in the state of Kansas in
20 furtherance of the agreement.

21 A conspiracy is an agreement with other
22 persons to commit a crime or to assist in committing a
23 crime followed by an act in furtherance of the agreement.
24 The agreement may be established in any manner sufficient
25 to show understanding. It may be oral or written or

1 inferred from all of the facts or circumstances. An act
2 in furtherance of the agreement is any act knowingly
3 committed by a member of the conspiracy in an effort to
4 effect or accomplish the object of the conspiracy. The
5 act itself need not be criminal in nature. It must,
6 however, be an act which follows and tends towards the
7 accomplishment of the object of the conspiracy.

8 The act may be committed by a conspirator
9 alone. It is not necessary that other conspirators be
10 present when the act is committed. Proof of only
11 one such act is sufficient. Murder in the first degree
12 is a killing intentionally, maliciously, deliberately and
13 with premeditation.

14 Subpart (b) of racketeering act 29. Subpart
15 (b) of racketeering act 29 alleges that on or about
16 September 25, 1995, defendant David Michael Sahakian and
17 others unlawfully, willfully, deliberately, maliciously
18 and with premeditation and with malice aforethought, did
19 aid, abet, advise, encourage and otherwise willfully
20 participate in the murder of Charles Leger in violation
21 of Kansas Criminal Code, sections 21-3205 and 21-3401.

22 Kansas Criminal Code, section 21-3401 provides
23 that murder in the first degree is the killing of of a
24 human being committed, A, intentionally and with
25 premeditation. Kansas Crimina Code, section 21-3205

1 provides that a person is criminally responsible for a
2 crime committed by another if he intentionally aids,
3 abets, advises, hires, counsels or procures the other to
4 commit the crime.

5 In order to find defendant Sahakian guilty of
6 subpart (b) of racketeering act 29, the government must
7 prove the following elements beyond a reasonable doubt:
8 One, on or about the date alleged in the indictment in
9 the state of Kansas; two, someone committed the first
10 degree murder of Charles Leger. That is, someone killed
11 Leger maliciously, deliberately and with premeditation.
12 Premeditation means to have thought over the matter
13 beforehand. Three, before or during the first degree
14 murder of Charles Leger, defendant Sahakian intentionally
15 aided, abetted, hired, counseled or procured the
16 commission of the first degree murder of Charles Leger
17 with the intent to promote or assist in its commission.
18 A person who intentionally aids and abets the commission
19 of a crime with the intent to promote or assist its
20 commission may be held criminally liable -- criminally
21 responsible for the crime committed regardless of the
22 extent of the defendant's participation in the actual
23 commission of the crime.

24 Racketeering act 30, the narcotics conspiracy.
25 I will now instruct you on the elements of racketeering

1 act 30. Racketeering act 30 alleges that beginning on a
2 date unknown to the grand jury and continuing until at
3 least September 21, 1995 within the Central District of
4 California and elsewhere, defendant David Michael
5 Sahakian and others knowingly and willfully conspired and
6 agreed with each other to commit an offense against the
7 United States, namely, to distribute controlled
8 substances including heroin, methamphetamine and cocaine
9 in violation of Title 21, United States Code, sections
10 841(a)(1) and 846. Title 21, United States Code,
11 sections 841(a)(1) and 846 provides that it shall be
12 unlawful for any person to conspire, knowingly or
13 intentionally, to manufacture, distribute or dispense or
14 possess with the intent to manufacture, distribute or
15 dispense a controlled substance.

16 In order to find defendant Sahakian guilty of
17 racketeering act 30, the government must prove the
18 following elements beyond a reasonable doubt: Beginning
19 on a date unknown and ending on or about September 21,
20 1995, there was an agreement between two or more persons
21 to commit an offense against the United States, namely,
22 to knowingly or intentionally distribute a controlled
23 substance including heroin, methamphetamine or cocaine.
24 Two, Sahakian became a member of the conspiracy knowing
25 of at least one of its objects and intending to help

1 accomplish it.

2 A conspiracy is a criminal partnership, an
3 agreement of two or more persons to commit one or more
4 crimes. The crime of conspiracy is the agreement to do
5 something unlawful. It does not matter whether the crime
6 agreed upon was committed. For a conspiracy to have
7 existed, it is not necessary that the conspirators made a
8 formal agreement or that they agreed on every detail of
9 the conspiracy. It is not enough, however, that they
10 simply met, discussed matters of common interest, acted
11 in similar ways or perhaps helped one another. You must
12 find that there was a plan to commit the crime alleged in
13 the indictment as an object of the conspiracy.

14 One becomes a member of a conspiracy by
15 willfully participating in the unlawful plan with the
16 intent to advance or further some object or purpose of
17 the conspiracy even though the person does not have full
18 knowledge of all of the details of the conspiracy.

19 Furthermore, one who willfully joins an
20 existing conspiracy is as responsible as the originators.
21 On the other hand, one who has no knowledge of a
22 conspiracy but happens to act in a way which furthers
23 some object or purpose of the conspiracy does not
24 therefore or thereby become a conspirator. And,
25 similarly, a person does not become a conspirator

1 maliciously and with premeditation merely by associating
2 with one or more persons who are conspirators, nor merely
3 by knowing that a conspiracy exists.

4 As I have already explained to you, certain of
5 the other conspiracies charged as racketeering acts in
6 count 1 also require proof of at least one overt act.
7 The requirement for an overt act does not apply to the
8 conspiracy charged in racketeering act 30.

9 Racketeering act 34 regarding Walter Johnson.
10 I will now instruct you on the elements of racketeering
11 agent 34. Racketeering agent 34 does not have
12 two subparts. Racketeering act 34 alleges that beginning
13 on a date unknown to the grand jury and continuing until
14 at least September, 1997, defendant David Michael
15 Sahakian and others conspired to murder Walter Johnson,
16 and a co-conspirator committed an overt act in
17 furtherance of the conspiracy in violation of Illinois
18 Criminal Code, sections 8-2 and 9-1. Illinois Criminal
19 Code, section 8-2 provides a person commits conspiracy
20 when with the intent that an offense be committed, he
21 agrees with another to the commission of that offense.

22 No person may be convicted of conspiracy to
23 commit an offense unless an act in furtherance of such
24 agreement is alleged and proved to have been committed by
25 him or a co-conspirator. And Illinois Criminal Code,

1 section 9-1 provides that a person who kills another
2 individual without lawful justification commits first
3 degree murder if, in performing the act which caused the
4 death, one, he either intends to kill or do great bodily
5 harm to that individual or another or knows that such
6 acts will cause death to that individual or another.

7 In order to find defendant Sahakian guilty
8 of racketeering act 34, the government must prove the
9 following elements beyond a reasonable doubt: One, on or
10 about the dates in the indictment; Two, defendant
11 Sahakian agreed with others to commit the first degree
12 murder of Walter Johnson; Three, defendant Sahakian made
13 that agreement with the intent of committing the first
14 degree murder of Walter Johnson; and, Four, an act in
15 furtherance of the agreement was performed in the State
16 of Illinois by any person to the agreement.

17 A person commits the offense of first degree
18 murder when he kills an individual if, in performing the
19 acts which caused the death, he intends to kill or cause
20 great bodily harm to that individual. An agreement may
21 be implied from the conduct of the parties although they
22 acted separately or by different means and did not come
23 together or enter into an express agreement.

24 Racketeering act 37, re conspiracy to murder
25 black inmates. I will now instruct you on the elements

1 of racketeering act 37 which also does not have
2 two subparts. Racketeering act 37 alleges that beginning
3 on a date unknown to the grand jury and continuing until
4 at least November 24, 2000, within the Central District
5 of California and elsewhere, defendant David Michael
6 Sahakian and others conspired to murder black inmates in
7 the institutions of the federal Bureau of Prisons, and a
8 co-conspirator committed an overt act in furtherance of
9 the conspiracy in violation of California Penal Code,
10 sections 182 and 187.

11 California Penal Code, section 182 makes it
12 a crime for two or more persons to conspire to commit any
13 crime. California Penal Code, section 184 further
14 provides that no agreement amounts to a conspiracy unless
15 some act besides such agreement be done within the state
16 to effect the object thereof by one or more of the
17 parties to such agreement.

18 In order to find defendant Sahakian guilty of
19 racketeering act 37, the government must prove the
20 following elements beyond a reasonable doubt: One, on or
21 about the dates alleged in the indictment; Two, defendant
22 and at least one other person entered into an agreement
23 to kill black inmates unlawfully; Three, defendant and at
24 least one other conspirator specifically intended to
25 enter into an agreement with one or more other persons

1 for the purpose of killing such black inmates unlawfully;
2 Four, defendant and at least one other conspirator
3 harbored express malice aforethought, namely, a specific
4 intent to kill such black inmates unlawfully; and, Five,
5 an overt act was committed in California by at least
6 one of the conspirators who had agreed and intended to
7 commit the murders unlawfully.

8 The term overt act means any step taken or act
9 committed by one of the conspirators which goes beyond
10 mere planning or agreement to commit a crime and which
11 step or act is done in furtherance of the accomplishment
12 of the object of the conspiracy.

13 To be an overt act, the step taken or act
14 committed need not in and of itself constitute the crime
15 or even an attempt to commit the crime. Nor is it
16 required that the step or act be a criminal or an
17 unlawful act. It is not necessary to the guilt of a
18 particular defendant that the defendant personally
19 committed an overt act so long as he was one of the
20 conspirators when the overt act was committed. The
21 formation and existence of a conspiracy may be inferred
22 from all the circumstances tending to show the common
23 intent and may be proved in the same way as any other
24 fact may be proved, either by direct testimony of the
25 fact or by circumstantial evidence or by both direct and

1 circumstantial evidence.

2 It is not necessary to show a meeting of the
3 alleged conspirators or the making of an express or
4 formal agreement. It is not a defense to the crime of
5 conspiracy that an alleged conspirator did not know all
6 the other conspirators. The members of a conspiracy may
7 be widely separated geographically and yet may be in
8 agreement on a criminal design and criminal intent
9 entertained in common by others and as its object and
10 purposes is all that is necessary to make that person a
11 co-conspirator when the required elements of a conspiracy
12 are present.

13 All right. I will now instruct you on the
14 RICO conspiracy offense charged or alleged in count 2 of
15 the indictment beginning with the language of the
16 indictment and the pertinent federal statute. Count 2
17 alleges that from an unknown date and continuing until at
18 least July 25, 2002, within the Central District of
19 California and elsewhere, defendant David Michael
20 Sahakian and others unlawfully, willfully and knowingly
21 conspired, confederated and agreed together and with each
22 other to violate Title 18, United States Code, section
23 1962(c), that is to conduct and participate directly and
24 indirectly in the conduct of the affairs of the Aryan
25 Brotherhood enterprise. Through a pattern of

1 racketeering activity, consisting of multiple agents
2 involving murder in violation of various state laws and
3 distribution of controlled substances, including heroin,
4 methamphetamine and cocaine.

5 Count 2 further alleges that the defendant was
6 associated with the Aryan Brotherhood criminal
7 enterprise, that the activities of the Aryan Brotherhood
8 enterprise affected interstate commerce and that the
9 defendant agreed that a conspirator would commit at least
10 two of the racketeering acts -- let me start that
11 again -- that the defendant agreed that a conspirator
12 would commit at least two acts of racketeering in the
13 conduct of the affairs of the enterprise. Title 1,
14 United States Code, section 1962(d) makes it unlawful for
15 any person to conspire to violate any of the provisions
16 of subsections (a), (b) or (c) of this section.

17 In order to convict a defendant on the RICO
18 conspiracy offense charged in count 2, the government
19 must prove all the following four elements beyond a
20 reasonable doubt: One, first, that the defendant
21 knowingly agreed to conduct or participate directly or
22 indirectly in the conduct of the affairs of the charged
23 enterprise through a racketeering activity; Two, second,
24 that an enterprise would be established as alleged in the
25 indictment; Three, third, that the enterprise or its

1 activities would effect interstate commerce; and, Fourth,
2 that the defendant would be associated with the
3 enterprise.

4 Now, the term -- the meaning of the terms
5 enterprise and affecting interstate commerce and pattern
6 of racketeering activity and associated with the
7 enterprise is the same as I have instructed you regarding
8 the substantive RICO offense charged in count 1.

9 However, the RICO conspiracy offense charged in count 2
10 is a distinct offense from the RICO substantive count
11 charged in count 1, and there are several significant
12 differences.

13 First, as I have previously instructed you, to
14 convict the defendant on a RICO substantive offense as
15 charged in count 1, the government must prove that the
16 defendant personally committed, caused or aided and
17 abetted at least two of the charged racketeering agents.

18 By contrast, to convict the defendant on the
19 RICO conspiracy offense charged in count 2, the
20 government is not required to prove that the defendant or
21 any conspirator actually committed, caused or aided and
22 abetted any racketeering act.

23 Moreover, it is not necessary in order to
24 convict the defendant of a charge of conspiracy, that the
25 acts or purposes of the conspiracy, whatever they may be,

1 have been achieved or accomplished.

2 In other words, the ultimate success or
3 failure of the conspiracy is irrelevant. Rather, the
4 conspiratorial agreement to commit a RICO offense is the
5 essential aspect of a RICO conspiracy offense which I
6 will explain shortly to you in more detail.

7 Another important difference is that unlike
8 the requirement to convict the defendant on a RICO
9 substantive offense as alleged in count 1, the government
10 is not required to prove that the alleged enterprise was
11 actually established, that the defendant was actually
12 associated with the enterprise or that the enterprise or
13 its activities actually affected interstate commerce.

14 Rather, because the agreement to commit RICO
15 offense is the essence of a RICO conspiracy the
16 government need only prove that if the conspiracy offense
17 were to be accomplished as contemplated, the enterprise
18 would be established, that the defendant would be
19 associated with the enterprise and that the enterprise or
20 its activities would affect interstate commerce.

21 And, finally, another important distinction
22 is that, as I previously instructed you, to convict the
23 defendant of a substantive RICO offense as charged in
24 count 1, the defendant must prove that the defendant
25 personally participated in the operation of or management

1 of the enterprise. However, such proof is not required
2 to convict the defendant of a RICO conspiracy offense as
3 charged in count 2.

4 Rather, the defendant may be convicted of a
5 RICO conspiracy offense even if he did not personally
6 participate in the operation or management of the
7 enterprise when the evidence establishes that the
8 defendant knowingly agreed to facilitate a scheme which
9 if completed would constitute a RICO substantive
10 violation involving at least one conspirator who would
11 participate in the operation or management of the
12 enterprise.

13 As I previously stated, the agreement to
14 commit a RICO offense is the essential aspect of a RICO
15 conspiracy offense. The jury may find that the defendant
16 has entered into the requisite agreement to violate RICO
17 when the government has proven beyond a reasonable doubt
18 that the defendant agreed with at least one other
19 co-conspirator, that at least two racketeering acts would
20 be committed by a member of the conspiracy in the conduct
21 of the affairs of the enterprise. The government is not
22 required to prove that the defendant personally committed
23 two racketeering acts or that he agreed to personally
24 commit two racketeering acts, but, rather, the government
25 must prove beyond a reasonable doubt that the defendant

1 agreed to participate in the enterprise with the
2 knowledge and intent that at least one member of the RICO
3 conspiracy which could be the defendant himself would
4 commit at least two predicate racketeering acts in the
5 conduct of the affairs of the enterprise.

6 Moreover, the indictment need not specify the
7 predicate racketeering agents that the defendant agreed
8 would be committed by some members of the conspiracy and
9 the conduct of the affairs of the enterprise. Rather,
10 where it is alleged, as in count 2 of the indictment,
11 that it was agreed that multiple acts indictable under
12 the applicable laws would be committed, the jury is not
13 limited to considering only the specific racketeering
14 agents alleged in count 1 of this indictment, the RICO
15 substantive count.

16 Rather, the jury may also consider evidence
17 presented of other racketeering acts committed or agreed
18 to be committed by any co-conspirator in furtherance of
19 the enterprise's affairs including racketeering acts in
20 which the defendant is not named in the indictment to
21 determine whether the defendant agreed that at least
22 one member of the conspiracy would commit two or more
23 racketeering acts.

24 Moreover, in order to convict the defendant of
25 the RICO conspiracy offense, the jury's verdict must be

1 unanimous as to which type or types of predicate
2 racketeering act the defendant agreed would be committed,
3 for example, at least two acts of murder, attempted
4 murder, aiding and abetting, murder or attempted murder,
5 conspiracy to commit murder or drug trafficking or any
6 combination thereof.

7 Further, to establish the requisite
8 conspiratorial agreement, the government is not required
9 to prove that each co-conspirator explicitly agreed with
10 every other co-conspirator to commit the substantive RICO
11 offense or knew all of his fellow coconspirators or was
12 aware of all of the details of the conspiracy. Rather,
13 to establish sufficient knowledge, it is only required
14 that the defendant knew the general knowledge and common
15 purpose of the conspiracy and that the conspiracy extends
16 beyond his individual role.

17 Moreover, the elements of a RICO conspiracy
18 such as a conspiratorial agreement, the defendant's
19 knowledge of it and the defendant's participation in the
20 conspiracy may be inferred from circumstantial evidence.
21 For example, when the evidence establishes that the
22 defendant and at least one other conspirator committed
23 several racketeering acts in furtherance of the charged
24 enterprise's affairs, the jury may infer the existence of
25 the requisite agreement to commit a RICO offense.

1 However, it is for the jury to determine whether based on
2 the entirety of the evidence, the government has proven
3 that the defendant entered into the required
4 conspiratorial agreement.

5 Furthermore, it is not necessary that the
6 government prove that the defendant was a member of the
7 conspiracy from its beginning. Different persons may
8 become members of the conspiracy at different times. If
9 you find that there is a conspiracy, you may consider the
10 acts and statements of any other members of the
11 conspiracy during and in furtherance of the conspiracy as
12 evidence against the defendant whom you have found to be
13 a member of it.

14 When persons enter into a conspiracy, they
15 become agents for each other. So that the acts or
16 statement -- so that the act or statement of
17 one conspirator during the existence of and in
18 furtherance of the conspiracy is considered the act or
19 statement of all of the other conspirators and is
20 evidence against them all.

21 Moreover, the defendant may be convicted as a
22 conspirator even though he plays a minor role in the
23 conspiracy provided that you find beyond a reasonable
24 doubt that the conspiracy existed and that the defendant
25 knowingly participated in the conspiracy with the intent

1 to assist other conspirators in accomplishing its
2 objective or objectives.

3 All right. And now I am going to instruct
4 you regarding the crimes charged in counts 3, 6 and 7 of
5 the indictment which I referred to as the VICAR counts.
6 I am going to instruct you on these counts jointly
7 because they are virtually identical. I will start with
8 the language of the indictment and then turn to the
9 pertinent statutes and then explain the elements of the
10 crimes.

11 Counts 3, 6 and 7 contain allegations about
12 the Aryan Brotherhood enterprise and its members and
13 associates. The counts allege that the Aryan Brotherhood
14 enterprise existed as a group of individuals associated
15 in fact, that the enterprise and its members engaged in
16 racketeering activity including acts involving murder in
17 violation of various state laws and narcotics trafficking
18 in violation of federal law and that the enterprise and
19 its activities affected interstate commerce.

20 Count 3 further alleges that on or about
21 August 25, 1995, within the Central District of
22 California and elsewhere, defendant David Michael
23 Sahakian and others unlawfully, willfully, deliberately,
24 maliciously and with premeditation and with malice
25 aforethought did aid, abet, advise, encourage and

1 otherwise participate in the murder of Charles Leger, in
2 violation of Title 18, United States Code, sections 2(a)
3 and 1111. Counts 6 and 7 further allege that on or about
4 August 28, 1997 within the Central District of California
5 and elsewhere, defendant David Michael Sahakian and
6 others unlawfully, willfully, deliberately, maliciously
7 and with premeditation and malice aforethought did aid,
8 abet, advise and encourage and otherwise participate in
9 the murder of Frank Joyner for count 6 and Abdul Salaam
10 for count 7 in violation of Title 18, United States Code,
11 sections 2(a) and 1111.

12 Finally, counts 3, 6 and 7 allege that the
13 defendant committed the above described violent crimes
14 for the purpose of gaining entrance to or maintaining and
15 increasing his position in the Aryan Brotherhood, an
16 enterprise engaged in racketeering activity in violation
17 of Title 18, United States Code, section 1959(a)(a).
18 Section 1959(a)(a) makes it a federal offense to commit
19 murder against any individual in violation of the laws of
20 any state or the United States for the purpose of gaining
21 entrance to or maintaining or increasing position in an
22 enterprise engaged in racketeering activity.

23 In counts 3, 6 and 7 of the indictment
24 respectively, the indictment alleges that the murders of
25 Charles Leger, Frank Joyner and Abdul Salaam were

1 committed in violation of federal law, namely Title 18,
2 United States Code, sections 2(a) and 1111. Section 1111
3 makes it a federal offense to commit a murder within the
4 territorial jurisdiction of the United States.

5 That section defines murder as the unlawful
6 killing of a human being with malice aforethought. This
7 section further defines first degree murder to include
8 any willful, deliberate and malicious and premeditated
9 killing.

10 Let me now explain the elements of the Vicar
11 counts charged in counts 3, 6 and 7. I will first state
12 the elements, and then I will instruct you further on
13 them. To convict a defendant of these Vicar offenses,
14 you must find that the government has established each of
15 the following elements beyond a reasonable doubt: One,
16 the Aryan Brotherhood enterprise existed; Two, the Aryan
17 Brotherhood enterprise engaged in racketeering
18 activities; Three, the defendant was a member of the
19 Aryan Brotherhood enterprise; Four, the Aryan Brotherhood
20 enterprise and its activities affected interstate
21 commerce; Five, someone committed the first degree murder
22 of Charles Leger for count 3, Frank Joyner for count 6 or
23 Abdul Salaam for count 7; Six, the first degree murders
24 at the United States Penitentiary at Leavenworth, Kansas
25 for count 3, Lewisburg, Pennsylvania for counts 6 and 7;

1 Seven, the defendant aided and abetted the first degree
2 murders of Charles Leger for count 3, Frank Joyner for
3 count 6, or Abdul Salaam for count 7; Eight, the
4 defendant did so for the purpose of gaining entrance to
5 or increasing or maintaining his position in the
6 enterprise.

7 One further instruction regarding the elements
8 of the Vicar offense charged in counts 3, 6 and 7. The
9 first element is that the Aryan Brotherhood enterprise
10 existed. In count 1, I instructed you on the definition
11 of an enterprise, and you should apply those instructions
12 here. The second element is that the Aryan Brotherhood
13 enterprise engaged in racketeering activities. And in
14 count 1, I instructed you on the meaning of the phrase
15 racketeering activity, and you should apply those
16 instructions here.

17 Briefly, however, racketeering activity
18 includes narcotics trafficking and any act or threat
19 involving murder. You will recall that in count 1, the
20 government was required to prove the defendant's
21 involvement in a pattern of racketeering activity
22 including two specified racketeering acts. For these --
23 actually, it is three -- for these three Vicar counts.

24 However, you do not need to find a pattern of
25 racketeering activity or any particular racketeering

1 acts. Instead, the government must prove only that the
2 enterprise was engaged in racketeering activity generally
3 including the types of criminal acts mentioned above.
4 The third element is that the defendant was a member of
5 the Aryan Brotherhood enterprise which includes both
6 members and associates of the Aryan Brotherhood.

7 The fourth element is that the Aryan
8 Brotherhood or its activities affected interstate
9 commerce. In count 1, I instructed you on that
10 requirement, and you should apply those instructions
11 here. The fifth element is that someone committed the
12 first degree murders of Charles Leger for count 3, Frank
13 Joyner for count 6, or Abdul Salaam for count 7, that is,
14 the killings were unlawful, premeditated or done with
15 malice aforethought.

16 To kill with malice aforethought means to kill
17 either deliberately or intentionally or recklessly with
18 extreme disregard for human life. Premeditation means
19 with planning or deliberation. The amount of time needed
20 for premeditation of the killing depends on the person
21 and circumstances. It must be long enough after forming
22 the intent to kill for the killer to have been fully
23 conscious of the intent and to have considered the
24 killing.

25 The sixth element is that the killing occurred

1 at the United States Penitentiary at Leavenworth, Kansas
2 for count 3 or Lewisburg, Pennsylvania for counts 6 and
3 7. If you so find, then I will make the further finding
4 that the United States Penitentiary at Leavenworth,
5 Kansas and or Lewisburg, Pennsylvania is within the
6 territorial jurisdiction of the United States as required
7 by Title 18, United States Code, section 1111.

8 The second element is that the defendant
9 participated in the murders of Charles Leger for count 3,
10 Frank Joyner for count 6 or Abdul Salaam for count 7,
11 that is, the government must prove that the defendant
12 either, (a), committed the unlawful, premeditated murder
13 alleged with malice aforethought or, (b), knowingly and
14 intentionally aided, abetted, counseled, commanded,
15 induced or procured the commission of such crimes and
16 acted before the crimes were completed.

17 It is not enough that the defendant merely
18 associated with the person committing the crime or
19 unknowingly or unintentionally did things that were
20 helpful to that person and was present at the scene of
21 the crime. The evidence must show beyond a reasonable
22 doubt that the defendant acted with the knowledge and
23 intention of helping the commission of the first degree
24 murders.

25 The eighth element is that the defendant must

1 have acted for the purpose of gaining interest to,
2 increasing or maintaining his position in the enterprise.
3 That element is satisfied if the government proves beyond
4 a reasonable doubt that the defendant committed the crime
5 because he knew it was expected of him by reason of his
6 association with the enterprise or because it was
7 consistent with and in furtherance of that association or
8 because it would maintain or enhance his position or
9 prestige within the enterprise or because it was an
10 integral aspect of his membership in the enterprise or
11 because he was expected to act and a failure to act would
12 have undermined his position in the enterprise. Such
13 motive need not be the sole or principal motive for the
14 defendant's actions.

15 The defendant also may be found guilty of the
16 Vicar offenses alleged in counts 3, 6 and 7 based on the
17 law of co-conspirator liability. I have discussed this
18 concept with you earlier in the context of the
19 racketeering acts. A conspirator is a kind of criminal
20 partnership, an agreement between two or more persons to
21 commit one or more crimes. The crime of conspiracy is
22 the agreement to do something unlawful.

23 Each member of a conspiracy is responsible
24 for the actions of the other conspirators performed
25 during the course and in furtherance of the conspiracy.

1 If one member of a conspiracy commits a
2 crime in furtherance of a conspiracy, the other members
3 have also, under the law, committed the crime so long as
4 the crime is reasonably foreseeable. That is, a
5 defendant can be held criminally liable if his
6 co-conspirator has committed a crime pursuant to the
7 conspiracy, and the crime could reasonably have been
8 foreseen to be necessary or a natural consequence of the
9 unlawful agreement.

10 Therefore, you may find the defendant guilty
11 of the VICAR charges alleged in counts 3, 6 and 7 of the
12 indictment, if the government has proved each of the
13 following elements beyond a reasonable doubt:

14 One, someone committed the first degree
15 murders of Charles Leger for count 3, Frank Joyner for
16 count 6, Abdul Salaam for count 7, that is, the killing
17 or killings were unlawful, premeditated and done with
18 malice aforethought as I have instructed you on those
19 terms earlier.

20 The person or persons who committed those
21 first degree murders were members of a conspiracy. The
22 first degree murders were committed by those persons
23 pursuant to that conspiracy. Four, the person or persons
24 who committed those first degree murders did so for the
25 purpose of gaining entrance to maintaining or increasing

1 their position in the enterprise, as I explained that
2 requirement to you earlier. Five, the defendant was a
3 member of the same conspiracy at the time the first
4 degree murder was committed. Six, the murder fell within
5 the scope of the unlawful agreement and could reasonably
6 have been seen to be a necessary and natural consequence
7 of the unlawful agreement.

8 Let me explain co-conspirator liability
9 further by contrasting it with criminal liability through
10 the commission or aiding and abetting the commission of
11 the underlying crime. To find the defendant guilty based
12 on co-conspirator liability it is not necessary that the
13 defendant personally act for the purpose of gaining
14 entrance to, maintaining, or increasing his position in
15 the enterprise as it would be for guilt based on aiding
16 and abetting liability. For co-conspirator liability, it
17 is sufficient if the killer acted with that purpose.

18 For co-conspirator liability, it is not
19 necessary that the defendant knowingly and intentionally
20 aided, abetted, counseled, commanded, induced or procured
21 the commission of the murder as it would be for aiding
22 and abetting liability.

23 For co-conspirator liability, it is sufficient
24 if the crime could reasonably have been foreseen to be a
25 necessary and natural consequence of the unlawful

1 agreement so long as the defendant and the perpetrator
2 were members of the same conspiracy and the murder was
3 committed pursuant to that conspiracy.

4 With the exception of a few instructions that
5 I will give to you after you have heard all the arguments
6 in the case and that relate to the deliberations, those
7 are the instructions on the law that apply in this case.

8 Thank you for your patience in listening to
9 them, ladies and gentlemen, and we will recess now for
10 lunch. And I will ask you to return at 1:00 o'clock to
11 begin hearing the arguments.

12 Remember, you are still not to discuss the
13 case, anything related to the case, any of the evidence,
14 testimony, instructions on the law, anything related to
15 the case and keep an open mind. Thank you.

16

17 (The following proceedings were held outside the
18 presence of the jury:)

19

20 THE COURT: Anything from counsel?

21 MR. GREEN: Nothing from defense, Judge.

22 MR. WOLFE: No, your Honor.

23 THE COURT: We are in recess.

24 (Luncheon recess from 11:45 to 1:00.)

25

(The following proceedings were held in the presence of the jury:)

4 THE COURT: All right. Let the record reflect the
5 presence of all members of the jury, all counsel and the
6 defendant present.

7 Mr. Wolfe, you may argue.

8 MR. WOLFE: Thank you, your Honor.

Good afternoon, ladies and gentlemen. I am Steven Wolfe, and it is my duty and privilege to present the evidence to you on behalf of the United States. I am often criticized for not keeping my voice up enough when I address the jury, and if you folks think that I am doing that again, just wave at me. I will try and bear it in mind.

16 What I am doing now is arguing. It is not
17 evidence. You have heard all the evidence, and argument
18 is intended to be a guide to the jury in search for
19 truth, and I hope that it is. I hope that you folks
20 believe that it is, but if you don't, don't follow what I
21 say. This is the temple of justice, and you folks are
22 the finders of fact. The judge has told you what the law
23 is, and you all decide what the facts are.

24 I submit that you should be thinking about
25 what I tell you and what the defense counsel tells you

1 with a skeptical frame of mind. If it persuades you, it
2 is the right thing, and if it doesn't, it should be just
3 ignored because you folks decide what the facts are and
4 the lawyers are supposed to be helping you do that. If I
5 don't, pay no attention.

6 This case is obviously about the defendant and
7 whether his guilt has been proven. It is also obviously,
8 a great deal of it about the Aryan Brotherhood, partly
9 about the gang but also about the racketeering
10 enterprise. The gang and the enterprise are not the same
11 things. The enterprise includes members and associates,
12 anyone who was employed by or associated with the
13 enterprise. The gang may have a slightly different view
14 of how it behaves.

15 The nature of the enterprise is important in a
16 lot of technical ways. It is important for you to decide
17 whether their activities affect or engage in interstate
18 commerce. It is important for you to decide whether when
19 defendant Sahakian ordered Bubba Leger murdered, did he
20 do it to maintain or advance his position in the
21 enterprise. Because if defendant just said, kill Bubba
22 Leger because he looked at me cross-eyed and I don't like
23 him anymore, that, according to the court's instructions
24 to you, is not guilty of count 3.

25 Among the elements the government has to prove

1 beyond a reasonable doubt is that when the defendant
2 ordered the murder, he did it to at least maintain his
3 position in the enterprise.

4 So I want to talk to you a little bit at the
5 beginning about the enterprise itself and what we know
6 about it, and I submit to you that there is a lot in this
7 case that is disputed, but there is no dispute in any
8 fundamental way about what the Aryan Brotherhood
9 enterprise is.

10 You have heard from a lot of Aryan Brotherhood
11 members, and they have told you who they are, what they
12 are about, what the AB is about. Glenn West, the first
13 witness, I guess, told you that he had been an AB member
14 since 1980, and he told you what the AB is like, that he
15 learned right away when he joined what the benefits of
16 membership in AB are, the gambling, the access to drugs,
17 the money.

18 He said he learned that he had to back a
19 brother, no matter what. He said that if you needed to
20 lie for a brother, then you did it. And the reason that
21 do you it, among others, some of it is just loyalty, and
22 defendant himself said that he believed -- although he
23 didn't seem to think that the Aryan Brotherhood was a
24 very criminal operation, he did say, the defendant said
25 that he owed an obligation to brothers even when he

1 didn't like them.

2 You may remember the defendant testified about
3 a situation in which there is an AB member that the
4 defendant didn't like. He is on the yard with him, and
5 somebody jumps a brother and knocks him down. Defendant
6 said, I owe him an obligation even if I don't like him.
7 And one of the reasons that you owe that obligation is
8 that they kill you if you don't.

9 Al Benton said early in his testimony, he has
10 also been a member since 1980. He said in passing about
11 testifying against the AB, he is here testifying against
12 the Aryan Brotherhood, and he said, you know, by my own
13 by-laws that man should be killed. That is what the AB
14 is. That is what Al Benton has known it to be since
15 1980. It is what Glenn West has known it to be since
16 1980.

17 Brian Healey testified early. He doesn't know
18 anything much about the fed AB because he has never been
19 in custody in the federal system before he dropped out,
20 but Brian Healey told you that the AB demands respect.
21 They demand it from everybody. As Brian Healey put it,
22 we demand it from the cops, we demand it from other
23 inmates, we demand it from the white, the black, the
24 brown, from everybody. And if you cross the line, we
25 kill you.

1 And Brian Healey would know, wouldn't he?

2 Brian Healey killed his cell mate in the cell for the AB.

3 Now, I don't know whether that makes Brian Healey a
4 monster. It is a monstrous act. There is no doubt about
5 that, but it tells you a great deal about it, what the
6 enterprise is and how they work.

7 The penalty for disobeying is basically death.

8 Al Benton said, I asked him what is required of a
9 brother. He said, well, whatever is needed. If it took
10 a killing, it took a killing. If it took a smack in the
11 mouth, it took a smack in the mouth. This is our society
12 in prison. This is not a legal society. That is
13 something that you have heard from a number of witnesses,
14 both dropouts.

15 You heard something similar from some of the
16 current gang members, James Harold Holiday, Doc Holiday
17 said he seemed to think gangs were a good thing. Said
18 that without the gangs in prison, there would be chaos.

19 Well, I am not sure that you folks should
20 accept Doc Holiday's invitation to let the rule of law
21 stop at the end of the prison, but he didn't have any
22 doubt about who runs the prison. He said the corrections
23 officers hold the perimeter, but we control the
24 environment.

25 And defendant told you some things about the

1 enterprise. He didn't seem very interested in describing
2 it to you, but there is some things even he didn't
3 dispute. He said you can't be a stool pigeon. You can't
4 be a homosexual. You can't do things that make the
5 fellows ashamed. You have to be loyal to your friends
6 and your brothers.

7 The defendant kind of disputed whether the
8 Aryan Brotherhood has any structure to its enterprise.
9 He said, well, I don't think I regarded Barry or TD as
10 commissioners. I heard other people call them
11 commissioners, but I thought of them as just the
12 old-timers. The old-timers had respect, old-timers like
13 Al Benton who joined in 1980, Glenn West who joined in
14 1980 or David Sahakian who joined in 1980.

15 The defendant will not tell you, candidly, I
16 submit, ladies and gentlemen, what the Aryan Brotherhood
17 is about. You saw him testify. You are allowed under
18 the court's instructions to consider in deciding whether
19 the defendant told you the truth, among other things, the
20 manner and appearance of his testimony, and I submit to
21 you that his manner was quibbling, denying the obvious,
22 refusing to admit the truth and that he wasn't telling
23 you the truth most of the time.

24 But even he had to say that when he joined the
25 Aryan Brotherhood in 1980 and when he got his tattoo of

1 which you have seen a picture on his chest as big as a
2 dinner plate is the way Brian Healey described it when he
3 saw it in the California state prison system. When the
4 defendant got that tattoo, he said he got it because it
5 was a proud moment to join the AB, and it was not a proud
6 moment because it is a mutual admiration society and they
7 help out the community. It was because they run the
8 yard.

9 Jimmy Inman who testified about, among other
10 things, his efforts to help the AB commit crimes and the
11 AB's effort to kill him, told you that the street crime
12 may run the street. He told you it about John Gotti. He
13 said that he knew John Gotti. They had been workout
14 partners and all around kick-it buddies for a year, and
15 Jimmy Inman said not long before Kurt came and tried to
16 kill him and Jimmy had to stop hanging with the AB, Jimmy
17 said, I was telling John what time it is.

18 And when asked what did you mean by that, he
19 said, I meant that the Mafia, the street criminals, they
20 run the street, but when you come to prison, you are
21 playing in our yard, and you have to play.

22 One of the things that is striking about the
23 defendant's testimony about the nature of the enterprise
24 is that the defendant insisted Michael McElhiney, Mac and
25 I are not peas in a pod. A lot of witnesses told you

1 that Mac and Dave operated together all the time when
2 they were in the same institution. Defendant says, no,
3 Mac did lots of things on his own. Defendant said if Mac
4 was selling drugs in Leavenworth, and, finally, when
5 badgered about it, the defendant said, well, yes, I heard
6 that he was and I believed that he was, but he was doing
7 it on his own, I wasn't doing it.

8 But that flies in the face of the defendant's
9 own account of who counts for something in the AB. The
10 defendant wouldn't say who the commissioners were, but he
11 said the old-timers like Barry and TD run things, like
12 the defendant who joined in 1980. The defendant said
13 that Michael McElhiney joined while McElhiney was in the
14 feds, 10 years after the defendant joined.

15 And I submit to you while the defendant won't
16 say it to you, the truth is that he was Michael
17 McElhiney's superior in the AB by the defendant's own
18 standard. The defendant is an old-timer, and while he
19 owes loyalty to the AB, the other members of the AB owe
20 loyalty to him. Glenn West said, you follow orders, no
21 matter what. The penalty is basically death for the most
22 part if you don't.

23 One of the other elements which I will cover
24 here quick before I forget about it which you encounter
25 when you go through the jury instructions is the

1 interstate commerce element. The enterprise has to
2 either engage in interstate commerce or affect interstate
3 commerce. The Aryan Brotherhood did both those things.
4 They engaged in interstate commerce because you heard
5 that drug smugglers, family and visitors, when they came
6 to Leavenworth contact visiting room brought drugs from
7 other states. Mary Bentley came from Minnesota, Greg
8 Storey's girlfriend came from California. They brought
9 drugs from other states in order to smuggle them into
10 Leavenworth.

11 The AB wrote letters and made calls between
12 the ADX in Lewisburg and Ron Slocum in Chino right out
13 here. He was carrying messages for them. All those
14 things are interstate commerce and those elements are
15 proven plainly.

16 One of the things about the enterprise that
17 was debated at some length in this case was, was it
18 restructured or reorganized or did the AB make an effort
19 to reinvent itself in 1993 or 1994 at Marion, and I
20 submit to you it did.

21 One of the obvious ways we know that is
22 Exhibit 1, the document with the typewritten part, and
23 handwritten part shows the plan that the AB had for
24 reinventing itself. There is a lot of dispute about
25 whether that document was found in David Sahakian's cell.

1 I submit to you it was, and I will take it up later as an
2 independent question, but it doesn't make much difference
3 to the effect of the document apart from the fact that if
4 David Sahakian really had that document planted on him,
5 it is a perversion of justice of the most horrifying
6 kind, and if that were true, it would be an awful thing.
7 But it is not.

8 And the document itself, though, is not as
9 important as its contents and its ideas. You heard about
10 the ideas from Gene Bentley who said that he worked over
11 those notions with Al Benton and TD Bingham and Barry
12 Mills at Marion in 1993, '94, '95. Bentley was there
13 between, I think, November of '93 and February of '95.
14 And he said they were working on it over that period of
15 time. Glenn West said that he talked about those ideas.

16 He testified at length about the ideas of
17 putting together a commission that counsel businessmen to
18 make some money because you can't make much money at
19 Marion or the ADX. There is no way to smuggle in drugs
20 with no contact visiting room. Some of the people don't
21 have money. The defendant did. His family stuck by him.
22 Some of the senior AB leaders did not, and they needed
23 the money. And the reorganization was intended to
24 increase their chances of making some.

25 Glenn West testified at length about those

1 ideas empowering businessmen. You also needed enforcers.
2 When Glenn West testified about the idea about why
3 enforcers were needed, he said when the rest of the
4 population fears us, they do what we want. And whatever
5 you think about whether all dropouts are rats and
6 snitches as defendant would argue to you, no one can
7 doubt that the fundamental nature of the AB is just what
8 they said it was, that when the rest of the population
9 fears us, they do what we want.

10 Glenn West said that he was at Marion between
11 stints. He was at Leavenworth. He went to Marion. Then
12 he went out to Lompoc, and that is why the document
13 mentions that speedy will run Lompoc when it lists the
14 council members.

15 And he was there between June and August 31 of
16 1993, and he had these discussions with Barry Mills.
17 Mills would write the material up by hand; Cleo Roy would
18 type it up. Glenn West saw it during that period of
19 time. Al Benton told you the same thing that he and
20 Barry mills talked about the reorganization, the
21 structure that they wanted to use to provide more central
22 command to kind of get the hard-headed members to pay
23 more attention to not being a broke, dysfunctional band
24 of prison bullies but the best criminal organization that
25 we can be.

1 Bentley -- Benton, excuse me, said that they
2 spent a year off and on with Barry Mills talking about
3 those ideas. Benton said that he didn't recognize
4 Exhibit 1. Indeed, when it was written down, he thought
5 that it was torn up afterward, and he said that he knew
6 it was written down a second time because it was going to
7 be sent out to other institutions, but he didn't know
8 whether it had been written down on any other occasion.

9 He didn't know whether Exhibit 1 had been
10 written down, and he was skeptical about it because of
11 the language. But I submit to you as he replied in his
12 testimony, you have to write the material down in order
13 to send it out to the other institutions.

14 And Glenn West told you that one of the best
15 places to hide it is in your legal materials which is
16 where the government went looking for it in 2002 when
17 this indictment was returned. They found a copy in
18 defendant's -- hidden in defendant's legal materials, and
19 while defendant emphatically denies that he had anything
20 to do with the document, even he acknowledged that the
21 structure that is described in the reorganization is
22 something that he heard discussed.

23 He said that he heard guys say that Barry and
24 TD were commission members. He said while he was in the
25 step down program, so while he is in the step down

1 program waiting to go to Leavenworth in 1994, he said, I
2 heard about councils. They wanted to have counselors.
3 If people went out to places, they wanted to have
4 counselors. Even defendant acknowledged that the
5 reorganization took place as the witnesses said it did.

6 Going to talk about the racketeering agents in
7 more or less the order in which the indictment listed
8 them and which her honor instructed you. The first of
9 those is the attempted murder of Joel Burkett. Joel
10 Burkett was in trouble in the California AB. He was in
11 trouble there because he had given up some information
12 about ammunition or snitched in some other fashion.
13 Brian Healey learned that Joel Burkett was in the hat in
14 1990. He learned that Jimmy Inman was too.

15 And if Brian Healey hadn't spent all his
16 criminal life in the state AB, if he had been transferred
17 to the feds, he would have taken the knowledge that Jimmy
18 Inman and Joel Burkett were in the hat and needed to be
19 killed, he would have taken it to the feds with him and
20 if he wanted to pursue it there. But he didn't.
21 Defendant did.

22 Defendant was in the California prison system
23 in the 1980's as he described to you, and he knew just as
24 Brian Healey did in the California prison system, the
25 California AB that Joel Burkett and Jimmy Inman were in

1 the hat, and when he went to the fed as he did on either,
2 I think it is May of 1991, the inmate history reporters
3 which are exhibits from about 250 to 320 or so, one of
4 those is defendant's Exhibit 303 will show you exactly
5 when he came into the federal system. He came to Marion
6 if May of 1991, and Kevin Roach described to you folks
7 that arrival. Said the defendant was talking to Barry
8 Mills. Defendant's newly arrived from the California AB.
9 He was talking to the commissioner, the federal AB, Barry
10 Mills.

11 Barry is telling him who is there, and he
12 mentions Jimmy Inman and Joel Burkett. Makes sense that
13 he would. He is saying to a new arrival from the
14 California state AB who else of their members and
15 associates from the California AB is there. And what did
16 defendant say? Defendant said, well, how come nobody has
17 seen them? Meaning, according to Kevin Roach, how come
18 they are not dead? They are in the hat. And according
19 to Kevin Roach, Mills said, well, I heard it was quashed
20 about Jimmy Inman. Send me a kite to tell me about it,
21 and Kevin Roach said defendant Sahakian sent Barry a
22 kite, and Barry let me read it. And it said, I, David
23 Sahakian, was there when they were put in the hat, I know
24 it, it wasn't quashed, and they ought to be dead.

25 And Barry Mills said, okay, you heard from

1 Gene Bentley that Mike Klaker was told to kill Joel
2 Burkett. You heard from Glenn West that the word came
3 from California that Joel Burkett and Jimmy Inman should
4 be hit and that Glenn West spread it around, that he told
5 Mike Klaker to kill Burkett and then he thought Snail
6 Hevle and Dallas Scott were there, and Jimmy Inman told
7 you about it.

8 Now, Jimmy Inman is a fascinating guy. He
9 told you that his troubles started in the California
10 prison system because he muscled somebody for some drugs
11 with a crime partner. He and his partner split the
12 drugs. Couple of days later his crime partner came back
13 and said I want yours too and Jimmy, not thinking that
14 was fair, said no. And a day or two later, the crime
15 partner and somebody else caught Jimmy Inman in the
16 shower and tried to kill him.

17 And Jimmy who doesn't seem to think too much
18 about being stabbed up, but he seems to recover pretty
19 fast, said that as he is being taken out on the gurney,
20 he said to his buddy that it was white on white meaning
21 it is not a race attack. But the guy who tried to stab
22 him was named Whitey. And someone who heard Jimmy Inman
23 say "white on white" thought he was snitching off Whitey
24 who tried to kill him. Cannot snitch in prison. Jimmy
25 Inman did that nearly 30 years ago, and people have been

1 trying to kill him behind it ever since. And Jimmy
2 Inman, no angel, he. When he got to the feds, he told
3 you that he spoke to TD Bingham and John Greshner to tell
4 them, you know, I didn't do anything wrong, I am not a
5 rat. I know there was this problem. Phil Fortman of the
6 California AB tried to kill me once, and I took the knife
7 from him and busted his nose, but I am here, I am not
8 hiding and I am going to make it right.

9 And Greshner said, well, I believe you, and TD
10 Bingham said I will check on it, I will look into it.
11 And Jimmy Inman said, well, he didn't hear anything more.
12 But thinking that maybe he can help himself when Mike
13 Klaker came to Jimmy Inman and said, well, they told me
14 to kill Joel Burkett, and I could use a little help, how
15 about it.

16 Jimmy Inman, like I said, no angel, he. Not
17 wanting to be a victim again, said, okay, I will help
18 you. And he told you he made the knife to kill Joel
19 Burkett, and he got rid of it after the attack. And Mike
20 Klaker tried to kill Joel Burkett as Kevin Roach said on
21 the flats at FE. He stabbed him in the neck. You heard
22 from the physician's assistant, Charles Welch, who
23 described the wounds, said that it was within a quarter
24 inch or millimeters, I forget what he said, of the
25 arteries and jugular veins that are in your neck. And

1 they had to send him out to the hospital for a while to
2 make sure that he wasn't bleeding out.

3 They meant to kill him, and it was the AB that
4 did it. There is no doubt that it is the AB because the
5 witnesses tell you that it is, and there is no doubt that
6 Mike Klaker is AB because I will show you some documents.
7 There are a bunch of membership lists that have been
8 found here. This one was found in TD Bingham's property
9 in September 7 of 1997 and among the members list, here
10 is Mike Klaker.

11 Later, when we talked about Jimmy Lee Inman
12 you will see that Kurt King who tried to kill Jimmy Lee
13 is also on the list. This is Exhibit 5. Exhibit 6 is
14 another membership list found on another occasion.
15 Exhibit 8 is another membership list. Defendant had had
16 a list of Aryan Brotherhood members and their register
17 numbers. He denies that it was in his property. Said
18 that he had never seen it before. As I said, we will get
19 to whether you can credit that.

20 But the document itself, Exhibit 38, and there
21 is something else that is interesting enough to show to
22 you now. It is Exhibit 35. It is a series of letters
23 and money orders that were intercepted at the ADX. We
24 don't know precisely when they were intercepted, probably
25 first couple of days in September because you can see,

1 here you can not, but some of the postmarks are legible
2 and the dates of purchase of the money orders are
3 generally legible. These are from August 31, 1995.

4 These will be -- these are interesting because
5 they include, they are all to Aryan Brotherhood members
6 at the ADX, Steve Scott, Gene Bentley, Glenn Filkins,
7 Mike Klaker.

8 Steve Fiklin, John Gershner, Chris Gibson and
9 Kurt King. These things are interesting because they
10 make clear that when Gene Bentley said to you that Mike
11 Klaker and Kurt King became members of the AB for their
12 hits on Joel Burkett and Jimmy Lee Inman, it is true.
13 They weren't members on March 1 of 1992 when Mike Klaker
14 hit Joel Burkett, and Kurt King may not have been a
15 member yet on September 30th, 1993 when he tried to kill
16 Jimmy Lee Inman, but by August 3, 1995 when they are
17 distributing the drug proceeds from the Leavenworth dope
18 conspiracy, those guys are in line with 11 other people,
19 all together, who got \$105 money orders.

20 Defendant didn't deny that the AB had a drug
21 operation at Leavenworth when he testified. He said it
22 wasn't for me, and if Mike or Mac was doing it and
23 sending money out, he was doing it for himself. And he
24 made fun of the idea that \$105 is any kind of money, but
25 maybe \$105 times 11 is enough for the defendant to care.

1 Another interesting thing about Joel Burkett
2 was Chris Risk. I don't know if you remember him. I
3 would show you a picture, but I forgot to pick up the
4 pictures of the witnesses so that I could show them to
5 you while I was talking to you, but you folks will have
6 the pictures of the witnesses, and Chris Risk was a guy,
7 47, I think he said he was, wearing a nice blue blazer,
8 little distinguished gray at the temples and going back
9 to college, he said, after he spent 22-and-a-half years
10 in prison for robbing banks again and again.

11 But he also said something interesting. He
12 carried the message about the Lewisburg murders for Barry
13 Mills out of the SHU at ADX to TD Bingham. So TD Bingham
14 could send it on to Al Benton.

15 Thank you.

16 Well, maybe I will find Chris Risk if we have
17 a little time toward the end. Risk took that message out
18 so it could be sent out to Al Benton so Al Benton in his
19 inimitable Aryan Brotherhood way could get a war message
20 on day one, August 27th. He heats it up on August 28th
21 at 10:00 o'clock in the morning, and by 8:00 o'clock.
22 Wayne Bridgewater has broken up the nightly monopoly game
23 played by the white inmate Larry Fortune and the black
24 inmates, Byron Ball and Frank Joyner, and Frank Joyner is
25 dead many times over in a pool of blood on the floor of

1 his cell. And now Benton has killed Abdul Salaam who is
2 reading a book in his cell. That is what the AB
3 enterprise is. It is no wonder the defendant doesn't
4 want you to understand just what kind of position he
5 occupies.

6 Chris Risk said that he was in custody with
7 defendant for a while at Marion, and he said that he was
8 talking to him once about Joel Burkett because Joel
9 Burkett was stabbed on their unit. Joel Burkett runs
10 afoul of Mike Klaker, as Kevin Roach put it, on the flats
11 of F unit, and defendant and Chris Risk were there. And
12 Chris Risk said he could see a little but not that much
13 through the bars of his cell. But after the attempted
14 murder, he was talking to Dave Sahakian about it. He is
15 out, defendant is in his cell. And Chris Risk is saying,
16 my God, did you just see what happened or maybe prison
17 inmates don't show that much emotion over people getting
18 killed in front of him but however he said it.

19 And somebody else, according to Chris Risk,
20 raised a question of whether it was a legitimate hit on
21 Joel Burkett, and Dave Sahakian piped up, yeah, it is,
22 and I know it is. And he went back into his cell to his
23 property, maybe his legal material where the evidence is
24 you can hide documents because the corrections officers
25 are not allowed to read your legal material.

1 They can thumb through them to make sure you
2 don't have a knife in there, but they can't read them
3 because of the privilege and defendant goes back into his
4 cell, and he comes out with paperwork that he showed to
5 Chris Risk that shows defendant Sahakian was a big deal
6 in the California state prison system. He was a shot
7 caller according to the California Department of
8 Corrections, and he showed that material to Chris Risk,
9 and he showed him paperwork that showed Joel Burkett had
10 been a snitch in California.

11 Defendant Sahakian brought that message out,
12 and in doing so, in passing it on, he conspired with
13 other members of the Aryan Brotherhood to kill Joel
14 Burkett, and he aided and abetted the murder, the
15 attempted murder of Joel Burkett, and because he did
16 that, he is guilty beyond a reasonable doubt indeed
17 beyond any doubt at all of racketeering act 10 involving
18 a conspiracy and attempted murder of Joel Burkett.

19 Jimmy Lee Inman is racketeering act 20, and
20 the proof is much the same. The acts of defendant are
21 the same. Kevin Roach described, as I mentioned to you
22 earlier, how when Barry Mills told the defendant who was
23 at Marion when the defendant first arrived, the defendant
24 wanted to know why nobody had seen Burkett and Inman.
25 Why? Since they were in the hat, they weren't dead and

1 he passed a message. Glenn West passed it on. Kevin
2 Roach knew a lot more about the hit on Jimmy Inman
3 because the guy who did it, Kurt King, who tried to kill
4 Jimmy Lee Inman was Kevin Roach's crime partner.

5 Kevin Roach is doing two life sentences.
6 One is parolable, and one is not. One is natural life.
7 You die there in Massachusetts, and one of those murders
8 was for a prison murder and his crime partner for the
9 prison murder in the Massachusetts Department of
10 Corrections was Kurt King. So Kevin Roach said Barry
11 Mills asked me, do you think if I asked Kurt King or told
12 Kurt King to kill Jimmy Inman, do you think he would do
13 it? And Kevin Roach, being a helpful guy and wanting to
14 rise in the enterprise said, yeah, he helped me kill
15 somebody in Massachusetts, I think he would do it for
16 you.

17 And Barry Mills asked him to do it and Kurt
18 King did it. You heard from Charles Welch about the
19 injuries to Jimmy Inman. You heard from Jimmy Inman.
20 Jimmy Inman said one of the wounds was pretty serious.
21 Jimmy Lee Inman described how he is out on the yard, he
22 is walking around, and Kurt King and some other kid who
23 was Roger Maynard Low, and Jimmy Lee Inman didn't
24 remember his name. There he sees them digging in the
25 dirt in the yard and then going over to, talking to Mac

1 McElhiney and then they come back and dig for a while and
2 they go back and talk with Mac and come and dig some more
3 and come back and talk with Mac. He said that he knew
4 something was going on when he saw them digging because
5 that is where you bury knives.

6 You don't want to run them back and forward
7 between the yard and the block through the metal
8 detectors when you can get one out to the yard and leave
9 it there buried, but evidently Kurt King couldn't find it
10 right away, but, eventually, he found it, and Jimmy Lee
11 Inman was also suspicious because his workout partner and
12 all around kick-it buddy, John Gotti didn't come out to
13 rec that day. And Jimmy Lee Inman believed that was
14 because of the Aryan Brotherhood's interest in the
15 welfare and pocketbook of John Gotti, that they advised
16 him not to come out.

17 So Jimmy Lee Inman is on point. He used the
18 phrase that defendant liked so much in cross-examination.
19 Jimmy Lee Inman said I was on point, I am walking around,
20 I walk past Kurt King, he falls in behind me. The kid is
21 in front of me trying to distract me, but I heard Jimmy
22 Lee Inman coming fast up behind me, and I turned around
23 and started backpedaling, and he is coming towards me,
24 stabbing me, and I am backpedaling. Finally, I got back
25 a little further, and I dropped down and I dived into him

1 at his legs and I got him down. I got the knife from
2 him. I had one real stab wound in the back, punctured
3 the lining of my lung, couldn't breathe very well. I had
4 to go to the hospital for three days. And when I asked
5 him about the rest of his injuries, he said they were
6 mostly, except for that one in the lung, they were pokes
7 and scratch marks.

8 But those injuries and those facts make plain
9 that the AB tried to kill Jimmy Lee Inman, and the
10 defendant brought the message. And by doing so, he is
11 conspiring with the AB to kill Inman. He is aiding and
12 abetting their efforts to kill him. The one wound in the
13 lining of the lung that sent Jimmy Lee Inman to the
14 hospital makes plain what we already know from what we
15 know about the AB, the AB intended to kill Jimmy Lee
16 Inman because they believed he is a snitch, and if there
17 is anything that is plain is that the AB kills snitches.
18 Now, Benton said they are my bylaws. Guy who testifies
19 ought to be killed. He thought he ought to be killed
20 according to his own rules.

21 You can find Kurt King, as I said, also listed
22 in the AB exhibit list, Exhibit 5, Exhibit 6, Exhibit 8.
23 He is one of the people who got money from the Aryan
24 Brotherhood's drug operation at Leavenworth, those
25 envelopes and money orders are Exhibit 35.

1 So let's talk about the Aryan Brotherhood's
2 drug operation at Leavenworth. There are a couple
3 instructions that are interesting or particularly
4 relevant to this. Instruction 36. The court instructed
5 you that joining an existing conspiracy makes you just as
6 criminally liable as the originators of the conspiracy.
7 Dave Sahakian did not start the drug operations of the AB
8 at Leavenworth. We don't know who did, but it is clear
9 that Gene Bentley was doing it. Gene Bentley was doing
10 it with his wife. Mary Bentley lived in Minnesota, and
11 she would come down for visits and smuggle drugs into
12 Leavenworth through the contact visits.

13 Bentley did it with Al Benton who was there at
14 the same time. Glenn West was there at the same time,
15 and Glenn West told you that they used Ronnie Slocum and
16 Mary Bentley, that Mary Bentley continued smuggling drugs
17 for them even after Gene Bentley left Leavenworth. Mac,
18 Mac -- Glenn West told you that they used other smuggling
19 methods. They smuggled stuff in on a dump truck
20 one time. He said they used the hobby craft room. They
21 would set up paintings on easels in the hobby craft room
22 so the guards couldn't see. And they would cut and
23 package dope in the hobby craft room. He said they would
24 also use paintings. They would do paintings, and in the
25 stretchers, they would hollow them out and send them out

1 with a bad return address perhaps or just send them out
2 and have them sent back. And they would have dope
3 concealed in the frames of the paintings.

4 Dewey Lee told you that he smuggled drugs
5 into Leavenworth for Benton and West, and after they
6 left, Al Benton said I left Mark Nyquist in charge when I
7 left Leavenworth and went back to Marion. And Dewey
8 said, yeah, I smuggled dope for Al Benton after Al left.
9 Kevin Roach didn't have any direct information, but he
10 was at Marion and interested in the Leavenworth drug
11 operation because Kevin Roach is one of those people who
12 didn't have money.

13 Kevin Roach was at Marion where there is no
14 contact visiting. You can't do any drug business, and
15 while that may be good for the long term health of the
16 inmates there, it is not good for the people who depend
17 on criminal proceeds for the AB.

18 So Kevin Roach is interested in what is
19 going on at Leavenworth because that is the big money
20 maker, and he said that Bentley and Benton, then Mark
21 Nyquist, then Mac and Dave ran things for the AB. And he
22 paid attention to it because he was interested in the
23 money.

24 Among the exhibits are 59 and 60 which are
25 not -- 59, you can barely read. It is an envelope to Al

1 Benton and a money order -- you absolutely can't make
2 that out -- and a small note which is from Christine
3 Weston, Alan's cousin, he says, and Alan Hawley told you
4 it was her cousin or his cousin. That is Exhibit 59, and
5 Exhibit 60 is just about exactly the same.

6 It is to Kevin Roach. There, you can see the
7 money order a little better. You can barely make out --
8 I can't make out the amount, and you can hardly make out
9 the date, but it is plainly a money order, and the letter
10 is better as well. With a note. Dear Kevin, here is a
11 little something for you from Alan Hawley and Wilbur.
12 Hope that everything is okay for you. If there is
13 anything you need, let me know, Christine Weston, Alan's
14 cousin.

15 This is post-marked January 25th, 1995. So
16 the AB drug operation at Leavenworth is producing money
17 in January of 1995 before the defendant gets there to be
18 sent to Allan Benton and Kevin Roach, and it is producing
19 money after he gets there because we saw the thousand
20 dollars worth of checks that were intercepted and money
21 orders that were intercepted at the ADX post-marked
22 August 31, 1995.

23 That drug operation is a big deal to the AB.
24 The defendant doesn't care because his family watches out
25 for him, he said, and it is uncontradicted. They didn't.

1 But it is important for other reasons. It
2 is important to the AB as a whole and because it is
3 important to the AB as a whole, it completely defies
4 belief that when Dave Sahakian, the big guy, the old
5 timer, the guy who was made and got his tattoo the size
6 of a dinner plate in 1980 in California, that when he
7 went to Leavenworth where Mike McElhiney in 1995 had been
8 a member since he joined in the feds. He had been a
9 member five years maybe. It defies belief that Dave
10 Sahakian didn't know and didn't care and didn't run
11 things in the drug operation at Leavenworth for the AB
12 because it is important.

13 And so is Dave Sahakian, and if you don't
14 think so, read his kites. I read one of these already in
15 cross-examination, but the kites are Exhibit 61 and 62.
16 They are defendant's kites to Alan Hawley, and I submit
17 to you if you look at them and read them and read their
18 tone, you will know that David Sahakian was running
19 things for the AB in the dope business at Leavenworth in
20 1995. He doesn't say, you know, I have the memory of an
21 elephant, and I once threw a lame off the fourth tier for
22 playing his radio too late at night.

23 So this stuff doesn't bother me much, but you,
24 talking to Hawley, you go and sit down -- exhibit 62.
25 You sit your fucking goofy ass down and write me a

1 goddamn explanation right now. Defendant doesn't like
2 the way I read that, but it is hard to resist temptation
3 because this kite says it all.

4 And this is a good place to talk about one of
5 the other things that bulks very large in this case. The
6 defendant says snitches and rats, snitches and rats,
7 bought and paid for, snitches and rats. All the
8 witnesses are getting something from the government. You
9 don't need to believe anything they say, and you
10 shouldn't believe anything they say. They are all
11 getting something.

12 Well, it is certainly true that the dropout
13 witnesses generally are getting something. That is why
14 the court's instruction to you is that you must,
15 according to the law, examine their testimony with
16 greater caution. It is not fair otherwise. They are not
17 like plain citizens. There is a temptation for them to
18 make something up, and you folks are charged with a duty
19 of making sure that they don't.

20 The hard part of this case for a jury is
21 deciding who to believe. The government doesn't duck
22 that because we can't and because justice is the object
23 here. You folks have to decide, and the instructions
24 tell you among other things how to go about doing that.

25 One of the ways is to try and figure out

1 whether the testimony of a witness is consistent with the
2 other evidence in the case or inconsistent with it. Is
3 it confirmed by the other evidence in the case or
4 corroborated by it, or is it not? And that is why this
5 is so important. Alan Hawley, unlike many of the other
6 dropouts, you know -- Kevin Roach heard the defendant
7 telling Barry Mills that Joel Burkett and Jimmy Lee Inman
8 were in the hat in 1991. Then Mills said send me a kite,
9 and Kevin Roach read the kite.

10 Defendant Sahakian sent a kite to Barry Mills
11 explaining why Burkett and Inman were in the hat, and if
12 Kevin Roach had had the presence of mind to put the kite
13 in his pocket, then you wouldn't have to rely on his
14 word, you would have the kite. Of course, that is not
15 what the AB does. If you are active AB, you are not
16 holding onto the kites. The last thing you would want is
17 to be caught with the evidence.

18 Indeed, when defendant Sahakian sent a kite to
19 Mike Eyselle who was Greg Storey's cell mate in the SHU
20 at Leavenworth, when he sent a kite to Eyselle saying
21 there is a snitch on the tier, will Storey kill him for
22 us, the instruction he gave to Storey was write your
23 answer on the kite and send it back to me because the
24 defendant doesn't want hot kites falling into the hands
25 of the cops. But sometimes they do. And this is one.

1 Allan Hawley was doing dope for the AB at
2 Leavenworth and doing a lot of it and using besides, but
3 he evidently didn't quite have the stomach for what
4 happened to Bubba Leger. Dave asked Hawley first, will
5 you kill him. And Hawley said yes. Hawley said, can't
6 very well say no. I am an associate, you take the
7 benefits. When they ask you to step up when you have had
8 had the benefits all along, you better say yes or you are
9 the guy that gets it.

10 But Allan Hawley didn't have to kill Bubba
11 Leger. By happenstance, he was moved out of the SHU
12 where he wasn't in a position to do the job, but Greg
13 Storey was there. Hawley asked Mac McElhiney, do you
14 want me to, you know, refuse to stand for count or do
15 something to get sent back to the SHU so that I can do
16 it. And Mac said, no, don't bother, we are going to have
17 Ziggy do it. And Ziggy did it. Greg Storey killed Bubba
18 Leger, and not much good came out of that for anybody,
19 certainly, not for poor Bubba Leger.

20 But it made Allan Hawley a little freaked out,
21 and Allan Hawley started saving kites so that you folks
22 do not have to tell yourselves or ask yourselves is Allan
23 Hawley telling me the truth about the dope business. You
24 still have to pay attention to what he looked like and
25 what he had to say, but he has also got the defendant's

1 kites.

9 But Exhibit 61 has a section, I will let you
10 folks read it, the bottom of the first page, top of the
11 second page. Defendant saying to Allan Hawley, "if you
12 have an issue setting out there, if you have dope out
13 there, I want you to get it to my sorry-ass homey JC and
14 send it in to me," and "send it to me, and I will tell
15 him to send it to you, you slice it and dice it how you
16 want." I will send it to you. You slice it and dice it
17 how you want.

18 You know, that is not I am a user. That is I
19 am in the dope business, you are my functionary, I will
20 send it along to you. You slice it and dice it how you
21 want.

22 Allan Hawley kept kites from Mike McElhiney
23 too, and you folks have the benefit of reading them.
24 There are also some interesting things. Besides the
25 kites, there are some other documents that have come into

1 the government's hands. They are the kites that Allan
2 Hawley saved from Mac, the kites that he saved from the
3 defendant. There are the money orders sent on August 31
4 to the AB members at the ADX. They showed you
5 Exhibit 35. They are the 59 and 60, the money orders
6 sent to Al Benton and Kevin Roach, and there is
7 Exhibit 39. Exhibit 39 is defendant's address book.

8 Your Honor, may I approach?

9 THE COURT: Yes.

10 MR. WOLFE: This is so interesting that I will
11 spend the time involved in showing it to you. This is
12 Exhibit 39, defendant Sahakian's address book. It was
13 seized from his cell, October 22nd, 2002, and the
14 defendant doesn't dispute that it is his. I gather he
15 didn't say anything about it anyway. And you can look at
16 it. It is the first of the documents that Julie Fox
17 Blackshaw said that she pulled out for further
18 examination to determine whether they were privileged.

19 She said that she knew which documents she had
20 done that with because she had a number placed on the
21 copies so that she would be able to tell. This is
22 SAHAOO1, the first page of the first document that she
23 reviewed, and she decided it wasn't privileged and it
24 came to the government.

25 And there are some interesting things in here.

1 One of them, on the page for C's, is Kathy Owen. You
2 folks know that Kathy Owen is Mark Nyquist's mother, and
3 when Mark Nyquist ran the dope business for the AB at
4 Leavenworth, he had the money sent to his mom. Now, it
5 is possible, I grant you, that David Sahakian has Kathy
6 Owen's address in his address book because he knows Mark
7 Nyquist and wants to correspond with his mom. Maybe. It
8 could be.

9 What else has he got in his address book?
10 Besides Kathy Owen, Mary Rathen, Big Lake, Minnesota.
11 Mary Rathen is Mary Bentley, Gene Bentley's wife who
12 smuggled dope into Leavenworth for Gene Bentley and kept
13 doing it for the AB after Gene Bentley left. Well, maybe
14 Dave Sahakian just likes to write to Gene Bentley's wife.
15 It could be.

16 This page, Randy Price is the defendant's
17 cellly who carried kites, and if I am not mistaken -- now,
18 I cannot remember for sure. The evidence was that one of
19 the orderlies brought a piece of metal. Now, it wasn't
20 an orderly. I am wrong about that. Randy Price is the
21 defendant's cellly and an orderly in the SHU, and Ron is
22 Ron Slocum who is also heart, soul, boots, phone line and
23 envelopes in the AB's dope business at Leavenworth. Sean
24 Darcy is the guy who receives money from the drug
25 business at Leavenworth and sends it on to the ADX. You

1 saw 11 money orders and notes from Sean Darcy in
2 Exhibit 35 of distributing the proceeds, and the last
3 page, Zig, Mary Bavaret. Mary Bavaret is Greg Storey's
4 girlfriend who smuggled dope for him into Leavenworth for
5 the AB. I submit to you, ladies and gentlemen, the
6 reason that every AB connected address in Dave Sahakian's
7 address book is one that is connected to the dope
8 business at Leavenworth is because Dave Sahakian ran the
9 dope business at Leavenworth for the AB, and you don't
10 have to believe Allan Hawley alone or Greg Storey alone
11 to know. You can read his address book.

12 And the defendant himself said, was the AB
13 selling drugs at Leavenworth? Probably. Mac was
14 convicted of it, but he was doing it for himself. I
15 heard Mac sent money to the ADX for drugs he sold for the
16 AB, but I never saw it. I heard and believed that Mac
17 and the AB were selling drugs at Leavenworth, but I never
18 saw it and I didn't take the money. It doesn't make any
19 difference that he didn't take the money, ladies and
20 gentlemen. He ran it for the AB.

21 Racketeering act 30 is another one about which
22 there is no reason to doubt the defendant did that, and
23 he had Bubba Leger killed. One of the fundamental facts
24 about Bubba Leger's murder is tied up with what we have
25 just been talking about. Bubba Leger worked in the dope

1 business for the AB at Leavenworth. Greg Storey said so.
2 I think Allan Hawley said so, and there is no contrary
3 evidence. Defendant is in a position where he can't say
4 that it is not so because he says he didn't know what was
5 going on, but he did deny his guilt with everything.

6 And so he is presumed innocent still right
7 now. He is sitting behind me here an innocent man. The
8 presumption does not dissolve unless and until you folks
9 decide that the government has proven all of the elements
10 of the offenses, any one of them because they have to be
11 decided individually. That is the only way the
12 presumption can be dissolved, but I am here to tell you
13 it has been proved.

14 But Bubba Leger sold dope. He broke it down
15 into saleable quantities and sold dope for the AB, and we
16 have already talked about how important that is. And the
17 reason that is so interesting about his murder is that
18 the claim seems to be it wasn't for the AB. Greg Storey
19 killed him for some other reason. He killed him because
20 Bubba called him a rat or Bubba made fun of him on the
21 tier or something of this sort, but not for the AB. And,
22 you know, it just can't be true. It cannot be true
23 because you cannot mess with the AB. Brian Healey put
24 it, we demand respect from cops, from the inmates, white
25 inmates, black inmates, brown inmates. And if you cross

1 the line, we kill you.

2 And one of the lines you can't cross is you
3 can't blithely kill somebody who is slinging dope for the
4 AB. You can't. And I can say at that as positively as I
5 do because you folks have been here for two months, and
6 you know it is true. There is a lot of dispute about
7 this or that individual fact, but there cannot be any
8 dispute about what the AB is.

9 They will not let somebody kill a money
10 maker without a terrific reason, and that Greg Storey
11 didn't like little Bubba Leger calling him names on the
12 tier is no reason at all, but there is a good reason in
13 the AB's eyes and that is that Bubba was a snitch. The
14 kite defendant sent -- I confess I cannot remember as I
15 stand here whether I am thinking of the kite that he sent
16 to Allan Hawley first when he said I want you to kill
17 Bubba or the one that he sent to Greg Storey later, but
18 he sent a kite saying I want Bubba killed because he has
19 been snitching off all the things that have been going
20 wrong lately, and that is a reason good enough to kill a
21 money maker. He is a rat.

22 Greg Storey told you about how the defendant
23 asked him to do it, got a knife for him or got the metal
24 in from the general population to the SHU, got Mike Hunt
25 to make the knife. Made two knives. Made a real one for

1 Greg Storey which is Exhibit 92, that ice pick with the
2 big handle. Makes your blood run cold to look at it.
3 And they made a sissy shank, Exhibit 93, for poor Bubba
4 Leger. They were going to drop a sharpened toothbrush on
5 his body to say that it was self-defense.

6 Now, it is just hog wash on its face. Greg
7 Storey is a big guy, and he had a big metal knife. Bubba
8 Leger was a little guy, and he had a little plastic
9 knife, and Bubba Leger got stabbed within an inch of his
10 life and then passed it and died. And Greg Storey had
11 not a mark on him. He had some scuffs on his knees. He
12 scraped his knees while he was busy stabbing the
13 daylights out of Bubba Leger. And that is a set of facts
14 upon which defendant would have you believe that Bubba
15 called out Greg Storey, fought him man to man or some
16 foolishness. They fetched in AB associates to lie to you
17 about it.

18 The defense case is Mike Eyselle, Whitey, who
19 says, wasn't the AB, Mike Hunt says I didn't make any
20 knives, and I got nothing to do with the AB. Jimbo
21 Martin said they are screaming -- Bubba was screaming at
22 Storey and Ziggy all night or all day and all night or
23 all day and half the night. You hear him all over the
24 place, hear it all the time, and finally Ziggy had -- he
25 had enough. He killed him.

1 The corrections officers all said they heard
2 no screaming. I suppose the defense will say, well, you
3 know, that is what the government does. The government
4 has their story, and they are sticking to it, but
5 striking thing is after Jimbo Martin said I heard
6 screaming between Ziggy and Storey all day and half the
7 night, so loud you can hear it even in the SHU where the
8 solid-fronted doors are on the cells, then Ronald Dennis
9 came in another defense witness who was there in the rec
10 cage that day.

11 In fact, if you look at exhibit, I think it is
12 83 which is a listing of the cells, the diagram of the
13 SHU at Leavenworth, on August 25th, 1995, when Bubba
14 Leger died, has the names of the people who are in the
15 rec pen out there. They are all AB associates, every
16 one, which I submit to you is why they decided to do it
17 there.

18 Greg Storey's going to kill him there, and
19 nobody is going to interfere, even Bubba's friends,
20 because it is an AB hit, and they want money. Mike
21 Eyselle will throw down the sissy shank under the shirt.
22 You know, even that doesn't make any sense because the
23 sissy shank is the toothbrush is under a shirt which you
24 can see in Exhibit 88. Exhibit 88 is a couple of
25 photographs. Shows the shirt, and there was another

1 little bit of cloth there which we will talk about in a
2 little bit, but the sissy shank is under the shirt. But
3 what is interesting about that is Bubba Leger, if there
4 were any truth to the idea that he was an aggressor or
5 that he wanted to take on Greg Storey with his little
6 toothbrush, he would have gone toward the toothbrush when
7 Greg Storey began stabbing the daylights out of him. He
8 wouldn't have left the toothbrush back in the back of the
9 rec pen under his shirt while he crawled and scooted up
10 to the front door hoping somebody would get him out
11 before he died.

12 He would have gone toward it if he knew it was
13 there, but he didn't know it was there. Ronald Dennis,
14 defense witness comes in and says, well, I didn't hear
15 any screaming. So Jimbo Martin says that there is
16 screaming, but it is uncorroborated by the corrections
17 officers. It is uncorroborated by defense witness Ronald
18 Dennis, and there is no doubt about who Ronald Dennis and
19 Jimbo Martin are.

20 Exhibit 96 is one of the kites that --
21 actually, it is not. This is even better. Exhibit 96 is
22 a kite that the BOP intercepted themselves. You know,
23 the BOP tries hard to keep these guys down, but a lot of
24 kites obviously get through but not every last one. And
25 Exhibit 96 is one that Officer Hunter or Harter

1 intercepted. The orderly was taking it back to Storey on
2 September 15th, 1995. It is McElhiney writing to Greg
3 Storey less than a month after Bubba Leger was killed.

4 All questions are to be answered with no
5 comment at this time. Avoid interviews when you can, but
6 always say no comment. Your plea will be guilty with
7 self-defense. You got a murder beef, hopefully, it will
8 work out to self-defense. No comment leaves you an out
9 at a later date, they can't say you said no when you
10 might want to qualify a specific aspect of the case.
11 Tell all those involved, no comment at this time, Jimbo,
12 et cetera.

13 These are Mac's instructions to Greg Storey
14 and also to Jimbo, Jimbo Martin who testified for the
15 defendant in this case and, I submit, lied to you about
16 what happened. He said screaming all day and half the
17 night, but nobody else says so including the defense
18 witnesses.

19 Mike Hunt said, you know, I am not AB, and I
20 didn't make the knife. Well, if you do believe him, you
21 would need to pay attention because if he didn't make the
22 knife, then Greg Storey isn't telling the truth because
23 Greg Storey said he made the knife and sent it to him.
24 This is Exhibit 242. This came from a search of Mike
25 Hunt's in 2002 which he must have forgotten he had, I

1 guess, or he wouldn't have been so eager to swear that he
2 is not AB. It is not the art particularly, but you folks
3 might remember having seen this before.

4 This is Exhibit 242. This is a card. Happy
5 Birthday Mike, from Mike Hunt, and it includes
6 inscriptions from Jason Schwyhart, one of the killers at
7 Lewisburg, from Jonny C., John Campbell, one of the
8 killers at Lewisburg, from Al, Al Benton, one of the
9 killers at Lewisburg, from Wayne, Wayne Bridgewater,
10 one of the killers at Lewisburg. Love and respect, here
11 is tweak, with love and respect. Tweak is another --
12 Henry Michael Houston -- another one of the killers at
13 Lewisburg, and he drew the card.

14 Mike Hunt lied to you about where his
15 loyalties lie. They do not lie with the truth. They lie
16 with the AB who I have suggested to you also lied about
17 whether there was screaming. Jimbo Martin is -- Jimbo
18 Martin is doing life five times over or something like
19 that, and he admitted that the penalty of perjury is no
20 deterrent to him because how many more years can you
21 serve after you die?

22 Greg Storey killed Bubba Leger for Dave and
23 the fellows. The defense claims to the contrary are
24 false. The kite, Exhibit 96, that I showed you that has
25 the reference to answer -- to Ziggy, answer everything no

1 comment, tell everybody involved. It also says we don't
2 want them anticipating our defense. That choice of words
3 is Michael McElhiney's, and it says it all.

4 Because you folks were told that Michael
5 McElhiney and Bubba Leger were tight. They were good
6 friends. Bubba did all Mac's tattoos. You have seen Mac
7 McElhiney's tattoos, the bird holding the shamrock in the
8 middle of his chest. It is a fabulous piece of art, and
9 Mac McElhiney and Bubba were close.

10 So why did Mac jump to help Ziggy get away
11 with killing Bubba? He did that because Bubba was his
12 friend. Bubba was making money for the AB, but Bubba was
13 a rat and he had to go, and Mac has to suck it up. And
14 he did.

15 John Gotti and Walter Johnson. What is
16 interesting about this racketeering act is that it is not
17 about whether John Gotti paid the AB protection. That is
18 an interesting question but a subsidiary one. What is
19 interesting or the question that you all have to decide
20 is did the Aryan Brotherhood including David Sahakian
21 conspire to kill Walter Johnson.

22 Now, it doesn't even make a difference whether
23 John Gotti offered them the contract or whether they just
24 wanted to do it because they would shake Gotti down after
25 they had done it. Mike Wagner said he thought that the

1 plan was to kill Johnson and then shake down -- shake
2 down Walter, shake down John Gotti. Everybody else,
3 Jessie Van Meter, Kevin Roach, Dewey Lee, Glenn West,
4 everybody else remembered it as Gotti had put out a
5 contract on Johnson, but the crime here is that the AB
6 including defendant conspired to kill Walter Johnson, and
7 it doesn't make any difference why.

8 It also doesn't make any difference whether
9 John Gotti gave commissary to Jessie Van Meter and Mike
10 Wagner and other associates of the AB because he was a
11 generous guy or because after Jimmy Lee Inman talked to
12 him, he knew what time it was.

13 Defendant said that it is shameful to slander
14 the memory of a sweet old guy like John Gotti, and all
15 the defense witnesses admired him. He appears to have
16 been a brave man. At least, he waded in the pool that
17 David Neville had in the attack he was in. And Doc
18 Holiday said you got to admire what he has accomplished.
19 I will retain the freedom to decide whether I admire John
20 Gotti, but the question is when he got bashed in the face
21 or on the head by Walter Johnson, did he think, well, no,
22 they will clean me up, I didn't need any stitches, swab
23 off the blood, and I will turn the other cheek. Well,
24 Doc Holiday and Duck said you can't turn the other cheek.
25 One of them, I forgot which, said you turn the other

1 cheek in prison, you will become a permanent victim.

2 Defense counsel proposed -- well, can't you
3 just say pretty please, don't do it anymore and there is
4 no dispute. Everybody agrees, the AB dropouts, the
5 defense witnesses, you can't say pretty please. Respect
6 is everything, and I think you got to figure since John
7 Gotti was in prison that respect was everything to him
8 too.

9 David Sahakian said calling somebody a rat,
10 that is a felony. It is like being punched in the face.
11 David said that in his testimony, defendant Sahakian. So
12 Butch Johnson or Walter Wahkil Johnson, smacking John
13 Gotti in July of 1996 at Marion is a felony offense, and
14 John Gotti like everybody that we have heard from here
15 knows that you have to retaliate. They punch you in the
16 face, you punch them in the face or worse.

17 And the question is did John Gotti think I can
18 either wait for my chance and kill him myself, or I can
19 ask my friends the Aryan Brotherhood. There is no
20 question that he was a friend of the AB. The defendant
21 was his friend. Jimmy Lee Inman was his friend. Jessie
22 Van Meter was his friend. Mike Wagner was his friend.
23 Why wouldn't John Gotti say I want my respect back, and
24 the way I propose to get it is to see Wahkil Johnson dead
25 and if the AB can do it for me, good, and that is just

1 all there is to it.

2 Everything you know about John Gotti and his
3 character so admired by Doc Holiday and the like,
4 everything you know about the nature of prison -- prison
5 is a dangerous place, the defendants say -- everything
6 you know about maintaining respect in prison tells you
7 that John Gotti wanted Wahkil Johnson killed.

8 The AB had the reach. Gotti asked him to do
9 it. They said they would. They never could. The BOP
10 hid him out. Dewey Lee testified that he was on the
11 range with Wahkil Johnson. He might have been able to do
12 something about it. He said the whole time that Johnson
13 was there until they took him out at the ADX, he never
14 came out of the cell. He didn't even shower. Wahkil
15 Johnson knew what was up.

16 And if he had come out, the AB would have
17 killed him. 1997, there is a lot of violence at Marion.
18 Starts with Butch Johnson whacking Joe Tokash over the
19 head with a radio in November of 1996, December of '96,
20 Mike Wagner retaliates. January 2nd, 1997, the DC Blacks
21 jump the white inmates on the rec yard of the unit.

22 Defendant essentially confirms that all
23 those things happened in the way that the government's
24 witnesses said they did. He says, I didn't order the
25 retaliation. It wasn't the AB. They were the Dirty

1 White Boys. Not me.

2 That is the only dispute about what went on.

3 After January 2, everybody goes into the hole.

4 The defendant wasn't there, Mike McElhiney was there from
5 January 6th on. The defendant came back on
6 February 14th. Defendant's Inmate History Quarters,
7 Exhibit 303, he came back February 14th after IU Bailey
8 was attacked, and he is in the I unit, D range with all
9 the white inmates, and the only dispute, as I say, is did
10 Dave and AB have anything to do with it? Well, yeah, and
11 I will tell you why. The November 5th, 1996, Butch
12 Johnson clocks Joe Tokash, a young black man, surprise
13 attack on an old white guy. Apparently just because Joe
14 Tokash was inoffensive, and Butch Johnson wanted to
15 commit an offense and get moved off the range.

16 But on December 18th, Mike Wagner jumped Butch
17 Johnson in the rec cage of the SHU at Marion. He said he
18 waited till they uncuffed him, and he had one hand free,
19 yanked the other hand out. I don't know which hand it
20 is, but he has got the cuff swinging from one hand, and
21 he uses that as a club to beat Butch Johnson although he
22 wasn't very effective at it because the footing was so
23 bad because of the ice. Well, why? Why did he care?

24 He told you that he cared because Mac and Dave
25 told him to do it, and Dave says, well, no, I didn't. So

1 who are you going to believe? I tell you that Mike
2 Wagner told you the truth, and the defendant didn't. And
3 here is why, I submit, you can reach that conclusion.

4 Revenge or retaliation, something to get back
5 your respect as we have just talked about with Walter
6 Johnson, it is the heart of what prison life is about.
7 Everybody says so. The AB says so, the Dirty White Boys
8 say so, duck and Doc say so. Everybody says so.

9 So who is looking to get even for Joe Tokash
10 being whacked by Butch Johnson? Was it the Dirty White
11 Boys? Well, why do they care? Why does Mike Wagner
12 care? But Mac and Dave care. Mac and Dave care because
13 Joe Tokash is an AB associate. Doc Holiday, the defense
14 witness, said on January 2nd, 1997, the DC's attacked a
15 bunch of guys out of AB on the rec yard.

16 That is Doc Holiday, the defense witness, and
17 when he was asked, I read him the names of the people who
18 were there. He said he is not AB, he is not AB, he is
19 not AB. Joe Tokash, yeah, I always considered Joe Tokash
20 AB.

21 Well, that is what Doc Holiday thinks. Joe
22 Yonkman, also a defense witness, the first defense
23 witness I think. Joe Yonkman is a retired Bureau of
24 Prisons employee who was at Marion and who wrote a long
25 report about the January 2nd attack.

1 And he said, Joe Tokash is an Aryan
2 Brotherhood associate. He is friends with Aryan
3 Brotherhood members and associates. He is AB.

4 Brian Healey who doesn't know from nothing
5 about the January 2nd incident, who has never been in
6 federal custody until he dropped out and the witness
7 security program had to hide him there, Brian Healey said
8 Joe Tokash is an AB associate from my time knowing him at
9 Folsom in the mid '80's and very close to the AB.

10 Defendant said he knew Joe Tokash from Folsom.
11 He said that Joe Tokash is Mac's homeboy. That is why
12 Mike Wagner jumped on Butch Johnson because Mac and Dave
13 cared what happened to Joe Tokash and then told Wagner to
14 do it, and it went further because old Joe Tokash was on
15 the rec yard on January 2nd, 1997 too. Steve Ritter,
16 Jessie Van Meter, Peter Merlotte who knows other people,
17 none of them were AB but Joe Tokash was. Joe Tokash, the
18 AB can not let somebody as old and close a friend of the
19 AB as Joe Tokash was and maybe still for all I know, they
20 can't let him be jumped by Butch Johnson in November of
21 '96 and then on January 2nd, 1997 be jumped again in a
22 surprise attack by the DC Blacks when the defendant
23 testified, I don't remember whether it was direct or
24 redirect, he looked at exhibit 1321 which is one of a
25 series of still photographs of a videotape of the

1 incident of January 2nd, 1997 on the B unit rec yard.
2 And defendant said, pointing to exhibit 1321, he said,
3 that is the dip bar there in the middle of the rec yard.
4 That is old Joe on the ground. That is a guy hanging on
5 the bar and jumping on his head.

6 Dave Sahakian knows that and remembers that to
7 this day because he told the Dirty White Boys and every
8 other white inmate on I unit, D range after January 2nd
9 when he got there that they were killing the DC Blacks
10 because of what happened to Joe and because the AB, if
11 you crossed the line, they kill you. They got to. They
12 are a smaller gang. The DC Blacks have the numbers. The
13 AB lasts because they do not take it. You may remember
14 hearing from Kevin Roach, Brian Healey, Daneen Adams. No
15 member of the Aryan Brotherhood has ever been killed by
16 another gang. Never. They do not take it.

17 You heard that Butch Johnson is mad at the
18 AB's because they killed his uncle, a DC Black at Marion
19 in the 80's. Daneen Adams, the BOP expert on DWB at the
20 ADX told you that the relationship between the AB and the
21 DC Blacks is not good and hasn't been for a long time
22 because they killed Cadillac Smith, Butch Johnson's
23 uncle, but nobody kills the AB and nobody jumps on old
24 Joe Tokash either.

25 You also know that that is true because the

1 defendant said I am not interested. I got no dog in that
2 fight. That is the Dirty White Boys. The Dirty White
3 Boys were humiliated on the rec yard, and they wanted to
4 get even. Well, that part of it is true. Jessie Van
5 Meter said I wanted revenge, I wanted revenge bad, and
6 you know it was true. He also said you can't do it
7 unless the AB says it is okay. You can't start a big
8 conflagration unless the AB thinks it is what they want.
9 And you know, that is true. Defendant denied it, but
10 let's look at who is to be believed.

11 Defendant says the Dirty White Boys, I don't
12 care, I don't care. If he didn't care, then maybe he
13 didn't tell them what to do. You can't believe it
14 because all the other evidence in the case is to the
15 contrary.

16 Daneen Adams said bad relations between the AB
17 and the DC Blacks, but the Dirty White Boys are junior
18 varsity for the AB. They always have been. Dirty White
19 Boys, by and large, aspire to be AB. Joe Yonkman said
20 the Dirty White Boys in Marion in 1997 were pawns of the
21 AB. They did work for the AB. They did fights. They
22 stabbed inmates. They extorted inmates. This is a
23 defense witness. He had provide it.

24 The defendant said, I told -- when I came back
25 February 14th to the I unit, D range, the white inmates

1 there, they had a list. They had been making knives, and
2 they had a list of people they were going to kill, and
3 they told me all about it.

4 And I said, why do you have the BGF on that
5 list? There is a lot of them. What did they do to you?
6 He says, I asked him what do you have the El Rukns on the
7 list for? What did they do to you? Well, and the
8 defendant won't say they did it because he told them what
9 to do, but I will say it. They took them off the list
10 because the defendant told them to do it, but the
11 defendant confirms, I told them you don't want the BGF
12 and the El Rukns on the list and they came off the list.

13 Defendant says, Captain Metters had the PC,
14 protective custody hearings, and he is having hearings,
15 and it turns out that he wanted somebody to tell the
16 Dirty White Boys and the inmates running with them to
17 knock off the cutting doors and interfering with the
18 security system, knock off the race-baiting on the tier.
19 And who did he go to? He had hearings for one black
20 inmate and Mac and Dave.

21 Captain Metters knew who was running things on
22 I unit and D range on March of 1997 at Marion, and the
23 defendant, I think, admits this because he wants you
24 folks to see that he said, okay, Captain, and I will tell
25 them, no more race-baiting, no more cutting knives, and I

1 told them I would do it, and I did it. But what he
2 misses is that if he can tell the Dirty White Boys and
3 the inmates running with them when to turn it off, it is
4 because he told them when to turn it on.

5 You will see Exhibit 152. 152 is a kite that
6 Mike Klaker intercepted from Steve Scott and turned over
7 to the SIS at the ADX. It says we are at onsite war with
8 the DC Toads only. Well, maybe it is interesting enough
9 to get out. We are at onsite war with the DC toads only.

10 We are at onsite war with DC Toads only
11 meaning exactly the people that Dave Sahakian said were
12 supposed to be at war with, that is who we are at war
13 with. I got a shank down here. Three toads were bumped
14 in Lewisburg. Code name for the DC's is buttercups. So
15 much to tell, Jessie stabbed BC eight times in G block,
16 and Mike W. is in, Jessie is in.

17 These are Dirty White Boys who aspire to be
18 Aryan Brotherhood members and became Aryan Brotherhood
19 members. It confirms that when Joe Yonkman and Denise or
20 Daneen Adams tell you that the AB was a farm team or the
21 DWB's were a farm team for the AB, that is true, and it
22 doesn't make any difference that Dave Sahakian denied it.

23 One last point on this question. This is
24 Exhibit 74. This is Barry Mills' handwriting. His
25 handwriting is very distinctive but hard to read. You

1 folks will have it in the exhibit room or the jury room
2 with you, and I will see if I can find this.

3 On the third page, it reads, I want to touch
4 base with TD and Kevin on the following. I have been
5 probing these DWB's in an attempt to get a fix on them
6 and their objectives. From what I have been able to peek
7 at, I am strongly concerned that if we fail to not pay
8 attention to these folks, in that we failed to not find a
9 way to squash this group or bring it totally under our
10 control and dominance, then I feel that they are
11 inevitably on a collision course with us. There appears
12 to be a core within them that dislikes us, and is driving
13 them in direct competition with us. Therefore, I suggest
14 that you three put your heads together and explore
15 whether it is possible to fashion some creative thinking
16 that will totally disarm them. I am open to something
17 along the lines of we absorb their best, and they squash
18 their group or we take control of their group and set it
19 up as a baseline army and developmental pool from which
20 we can draw the cream into our organization.

21 Barry Mills, in the third week of April in
22 1997, thought that the Dirty White Boys were a farm team
23 for the AB. Everybody thinks that. Everybody who has
24 testified has said that, defense witnesses and government
25 witnesses alike. Everybody but the defendant.

1 Well, ladies and gentlemen, I am running out
2 of time. So I am going to jump ahead to something I
3 promised you back toward the beginning. Defendant said
4 Exhibit 1 doesn't mean anything because the government
5 dropped it into my property and is framing me. We showed
6 you a video of the cell search that said that counselor
7 Ellit framed him, put the document in there. We have
8 already told you why it hardly makes a difference apart
9 from the painlessness of actually doing such a thing
10 because the defendant and everybody else who was at
11 Marion at the relevant time told you that that is what
12 Barry Mills discussed.

13 But the -- there are two explanations for how
14 Exhibit 1 came to be in the defendant's property. There
15 is a simple one and a complicated one. The simple one is
16 legal materials are where you hide stuff, documents that
17 you don't want people to find. Byron Tolson, one of the
18 people who searched the defendant's cell, said that he
19 had seen inmates hide things in their legal materials all
20 the time. Glenn West told you that he had seen it and
21 done it, and that is why the search warrants were done.
22 You heard testimony from Byron Tolson that Curtis Runge,
23 Julie Blackshaw, that the government executed dozens and
24 dozens of search warrants in October of 2002 and had a
25 special master, Julie Blackshaw appointed so that, unlike

1 the corrections officers who were only allowed to thumb
2 through the stuff to see if there is a knife in it, the
3 government could have somebody look at page by page.
4 Julie Blackshaw said she got a hundred boxes, I think,
5 and she read every page.

6 There is a reason that was done. It was done
7 because stuff gets hidden in the legal material and
8 forgotten or hidden in there and remembered, but in the
9 belief that the government won't find it. That is what
10 the search warrants were about. They were done to find
11 that document. They found Exhibit 242, the birthday card
12 that Mike Hunt says it is just a birthday card, and I got
13 nothing to do with the AB.

14 One of the membership lists, Exhibit 5 or 6,
15 came out of TD Bingham's cell from a search warrant in
16 October, 2002, and Exhibit 1 came out of the defendant's
17 property. The testimony was that when his cell was
18 searched, despite the fact that they were told to treat
19 legal material one way and nonlegal material another way,
20 Byron Tolson and Rick Ellit treated everything as legal
21 materials. They boxed it all. They labeled it all legal
22 so that Julie Blackshaw was going to review all of it.
23 They sealed it. After it was sealed, it was taken and
24 stored, and the legal department made a copy of it all
25 because the court had ordered that.

1 And the copy was returned to the defendant
2 within two weeks, and then the boxes were sent on to
3 Julie Blackshaw in Los Angeles where she locked them up
4 along with all the other hundred boxes, wherever it was
5 in her locked facility, and she looked at every page.

6 And when she did, she found a number of
7 documents. The privilege things, she returned to the
8 defendant; the nonprivilege things, she gave to the
9 government. And the nonprivilege things were Exhibit 1
10 and 2 and Exhibit 38 and 39. Exhibit 39 is defendant's
11 address book which he acknowledges is his. Exhibit 1 is
12 this organization plan, two pages. Exhibit 38 is a
13 membership list. Membership list is Bates numbered
14 SAHA26. You saw the address book was Bates numbered
15 SAHA001 through 012. And these two documents are SAHA186
16 and 187.

17 So the first question I suggest you folks ask
18 yourself is if somebody flaked the documents, framed the
19 defendant by putting the documents, these two documents
20 and the exhibit list which he swears are not his and were
21 not in his property, how did they come to be 150 pages
22 apart? What the defendant claims is the act of framing
23 is this utterly obscure gesture that maybe is a hand,
24 maybe going into a box. How did that work out that the
25 documents came to be hundreds of pages apart?

1 There was no opportunity to frame the
2 defendant assuming that anyone cared to because the
3 testimony of the searchers was that they were briefed the
4 day of the search. There were 15 or 20 people briefed
5 each day. Rungy's briefing was on the 17th, Tolson's on
6 the 22nd. 15 or 20 people briefed each day, and after
7 the briefing, they were assigned a particular cell, and
8 they went and did the search immediately. So how is
9 anybody to know what cell they are going to search?

10 If counselor Ellit has something in particular
11 against the defendant Sahakian, how does he know he is
12 going to get his opportunity that day? He doesn't know
13 what cell he is going to search, and if he is told it is
14 Sahakian's cell, how is he going to find the documents
15 that he is supposed to slip into the box?

16 No part of this makes any sense. The very
17 thing that the defendant says proves he is right, the
18 cell search video proves that it makes no sense. There
19 is a video. Defendant is careful to say Mr. Tolson is
20 looking at somewhere else while Mr. Ellit frames me. But
21 the camera is not looking somewhere else. How does Ellit
22 imagine, assuming that he is so brave and he will do
23 this, how does he imagine he will get away with it? And
24 what about the cameraman? How does he suppose that the
25 cameraman won't -- the notion that the defendant was

1 framed simply makes no sense.

2 You can see why he might say it because he
3 wants to go home. He told you he has always wanted to go
4 home. When he went to Leavenworth, he really wanted to
5 go to Lompoc. His father was writing to people. One of
6 the things you folks can consider in evaluating the
7 defendant's testimony like everybody else's testimony is
8 according to instruction 10 does the witness have an
9 interest in the outcome of the case.

10 Defendant jumps all over dropouts who say, you
11 know, I went in the witness security program and when I
12 couldn't work anymore I asked them to give me money
13 because I couldn't work in prison industry. Well, that
14 is a bias perhaps. It certainly is something that you
15 all have to consider. Something else to consider is the
16 defendant has an interest in the outcome of this case.
17 The defendant does not want to stay in prison, and when
18 you decide whether he is telling you the truth, you are
19 entitled to consider that.

20 Here is something else. Here is an
21 interesting notion. Since I am so short of time, I will
22 go through this pretty quickly, but one of the other
23 reasons that it is not true that Exhibit 1 was used to
24 frame the defendant is who wrote this. It is a
25 fascinating notion which I will leave to you all. The

1 court instructed you. You have the power, the authority,
2 the right, to examine known documents and compare them to
3 a questioned document and decide whether the handwriting
4 is the same.

5 This is Exhibit 13. 13 a package of
6 photographs that came out of McElhiney's cell. Whole
7 bunch of photographs. One of them is this photograph of
8 the defendant and has this writing if the back.

9 You will see, to his buddy Mac, gladdens me
10 heart to get with you again, 10 years and 2500 miles from
11 where we both began. It has been a long road filled with
12 growth and expansions and it will continue with us till
13 the fat lady sings. Your friend, David S.

14 This is how the defendant writes his A's in
15 this document. Here are some D's. Here are some E's in
16 the middle of words or at the end, they are kind of
17 square and especially at the end they often have this
18 long stroke in the center, but at the beginning of a
19 word, it is this not squared E, like script E, done in
20 one gesture. Here are N's. Some N's. The way he does
21 his R's.

22 Here is Exhibit 17. This is Wilbur. Michael
23 McElhiney and his cool tattoo. It is defendant's
24 inscription on birthday card. As ever, blood and honor,
25 Dave and the shamrock. It is Exhibit 17 in evidence.

1 If you look at -- if you look at this, and
2 look at the R's and the E's and the D's and the N's. I
3 think you will find looking at these D's and comparing
4 them, looking at these terminal E's with the long central
5 stalk, you will see that the defendant wrote Exhibit 1,
6 the handwritten part.

7 This is Exhibit 15. Another inscription.
8 As always in blood, loyalty and honor, Fredrick T.
9 Fishhook, AB, brother Mac. "Every" is another one of
10 those initial E's that is written by the rounded stroke.
11 This is Exhibit 62. You look at it, it is known because
12 the defendant acknowledged that he wrote it, and compare
13 that to -- this is a blowup of it.

14 Here are these terminal E's where the long
15 stroke. Here is the rounded E that he uses at the
16 beginning of the word. Looking at the N's and R's and
17 D's. This is a piece of Exhibit 1, the handwritten
18 portion. There is the initial E. Here is a terminal E
19 with the long stroke, the terminal E with the long
20 stroke. Another blowup from exhibit 1. Each, embrace,
21 the initial E's written, the terminal E's with the long
22 stroke. Defendant wrote it. You folks, you look at it.
23 You see what you think, but if you are not entirely
24 persuaded by that, it is just a notion. It is one of
25 many things that you folks are obliged to consider.

1 The evidence as a whole is where the strength
2 of the government's case lies. The defendant says
3 snitches and rats, snitches and rats. I have shown you
4 why that is not all the case is about.

5 There are kites, intercepted letters,
6 intercepted phone calls. We went through the, while
7 Daneen Adams was on the stand, the Lewisburg message
8 after Dave sends it to the ADX through Jessie Van Meter
9 and Michael Wagner calling for nationwide war telling who
10 is on the hit list, saying we got to get John Gotti.
11 They send a message off to Lewisburg, and the BOP was
12 able to track that.

13 There is a letter from Ron Slocum back to
14 Barry mills or back to Mills saying I have just heard
15 from Bubba, TD Bingham, and I sent a message to that guy
16 meaning Al. And Lewisburg happens. He sent a message, a
17 letter back to TD Bingham which is also intercepted and
18 says I got your letter and I sent the word to that guy.
19 Oh, well, shit happens.

20 Another thing that is important about this
21 is the dropouts are not all the same. The defendant says
22 they are all lying, they were all bought and paid for.
23 There are kites for some of them that show that that is
24 not the case. There is also -- they are all different.
25 There are a dozen-and-a-half of them. Glenn West goes

1 out. He got out in 1999. He left the AB and went
2 straight. He dropped the AB on his own with no
3 temptation. Nothing from the government. He had had
4 enough. He got old. He grew up, whatever it was. He
5 wasn't interested anymore, and the government came back
6 and prosecuted him for what he had done, and he was a
7 citizen now. And he plead guilty.

8 He did some more time for it. He is hoping
9 that he won't do anymore, and it is up to his sentencing
10 judge. Jessie Van Meter got out in January of 2000, and
11 he went and got a job. He said I was released on Friday,
12 and I had a job on Monday. And he didn't do any of the
13 things that they asked him to do when Mac McElhiney
14 wanted him to come back and perjure himself at trial
15 again, he refused. And he dropped. No temptation. He
16 just got out and saw the world, and thought, you know,
17 the AB isn't really what I want to do.

18 That is the reason that he testifies. He
19 became a citizen. Brian Healey and Kevin Roach are in
20 the opposite situation. Kevin Roach is doing two life
21 sentences. Unless the Governor of Massachusetts decides
22 to partner him, he is going to die in prison no matter
23 what he says, no matter what he does, no matter where he
24 goes.

25 He was not bought and paid for. It is a

1 different calculus. You folks need to decide about the
2 witnesses one by one, but they are not all the same. And
3 you folks need to consider particularly where six or
4 eight of them are in completely different situations, all
5 heard different parts of the same activity. Like Jimmy
6 Inman. Or Joel Burkett.

7 Give you one last thought. The defendant's
8 essential pitch to you folks is the prison is ours. Doc
9 Holiday said the corrections officers have the perimeter,
10 but we control our environment. Doc Holiday said the
11 gangs, if you take them out of the prison, chaos will
12 ensue. Doc Holiday loves the gangs, and the defendant
13 invites you folks to feel the same way.

14 Prison is theirs. Let them have it. Citizens
15 should worry about the streets. Let the gangs worry
16 about the prison. Doc Holiday said. It was Duck
17 McDautery said. It is what defendant essentially wants
18 you folks to decide. On behalf of the United States
19 Department of Justice and the people of the United States
20 of America, I urge you to decline the invitation.

21 Defendant will address you tomorrow. The
22 government gets the last word because we have all the
23 burdens. Defendant does not have to say anything, does
24 not have to put on any case. We have the burden of
25 proving every single element of every single count beyond

1 a reasonable doubt. Because it is our burden, we get the
2 last word.

3 And when you have heard from the defendant and
4 I talk to you again, I am going to ask you to find the
5 defendant guilty. Every charge, every special verdict,
6 every count, because the evidence shows that he is.

7 Thank you.

8 THE COURT: Thank you.

9 It is hard work listening.

10 Thank you, ladies and gentlemen, for your
11 patience, and I am going to excuse you for the day. I
12 just want to explain why. Although, it may be -- you
13 look real tired so maybe it needs no explanation, but in
14 all fairness, I don't like to breakup anyone's closing.
15 If we started now, I do put time limits and I enforce
16 them. I do put time limits on the closings, but if we
17 began the defense closing after the recess, it wouldn't
18 be fair to ask you to listen to it until 6:30 or
19 7:00 o'clock tonight, and it wouldn't be fair to the
20 defense to break it up and breakup the rhythm of it and
21 send you home at a reasonable hour when you would be
22 fresh enough to listen to all of it.

23 So that is why I struggled long and hard and
24 listened to the arguments of both sides about how to try
25 to do this in one day rather than over two days, and

1 there really isn't any way to do it without exposing all
2 of you and without being fair to both sides so they could
3 have a chance to present their arguments in a manner that
4 you would really be in a good position to listen to
5 everything that both sides want to say to you as well as
6 listening to those instructions which took quite a lot of
7 time too. So I just wanted to explain why it is that it
8 is taking time over a couple of days to do this.

9 But, remember, don't discuss the case yet.
10 Don't do any investigation in any fashion as you have
11 heard me say. Don't make up your minds because you
12 haven't heard everything yet, and I will see you tomorrow
13 morning at 9:00 o'clock.

14

15 (The following proceedings were held outside the
16 presence of the jury:)

17

18 THE COURT: We are on the record outside the
19 presence of the jury. This may be obvious, but we won't
20 break at noon tomorrow if you are not done at noon. I
21 will let you go until you are finished, but I mean, we
22 will take a break midmorning.

23 So, are you doing the argument, Mr. Shostak?

24 MR. SHOSTAK: Yes, ma'am.

25 THE COURT: If you will just let me know when you

1 come to a logical breaking point after an
2 hour-and-a-half, two hours whatever.

3 MR. SHOSTAK: Sure.

4 THE COURT: So if you will just look up and let me
5 know, then we will take that recess. All right.

6 Thank you very much.

7 MR. AKROTIRIANAKIS: Your Honor, the government
8 would like to submit an additional, a fourth proposed
9 verdict form. It occurred to me to us during the court's
10 instructions this morning, that it might, the law might
11 require special verdicts as to some of the other counts
12 so with the court's permission I will just propose that.

13 THE COURT: We will look at that. Have you
14 discussed it with counsel?

15 MR. AKROTIRIANAKIS: I haven't had the
16 opportunity.

17 THE COURT: Why don't you do that. Thank you.

18 (The proceedings were concluded.)

19

20

21

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1

2 CERTIFICATE

3

4

5 I hereby certify that pursuant to Section 753, Title 28,
6 United States Code, the foregoing is a true and correct
7 transcript of the stenographically reported proceedings held
8 in the above-entitled matter and that the transcript page
9 format is in conformance with the regulations of the
10 Judicial Conference of the United States.

11 Date: October 8, 2008

12

13

14

15

16 Katie E. Thibodeaux, CSR No. 9858

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EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3
4 UNITED STATES OF AMERICA,) No. CR 02-938-VAP
5 Plaintiff,)
6 v.) VERDICT FORM
7 DAVID MICHAEL SAHAKIAN,)
8 Defendant.)
9

10 We, the jury in the above-captioned cause, unanimously find
11 the defendant, DAVID MICHAEL SAHAKIAN:

12
13 COUNT ONE (Substantive RICO Offense, 18 U.S.C. § 1962(c))

14
15 Guilty _____ Not Guilty _____

16
17 (If you find the defendant guilty on Count One, indicate
18 whether you find the defendant guilty or not guilty as to
19 each of Racketeering Acts 10, 20, 29, 30, 34, and 37, and
20 then proceed to Count Two. If you find the defendant not
21 guilty on Count One, proceed directly to Count Two on page 2
22 of this Verdict Form.)

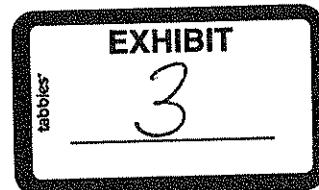
23
24 Racketeering Act 10 (re Joel Burkett)

25 Subpart (a) (Conspiracy to Murder Joel Burkett)

26 Guilty _____ Not Guilty _____

27 Subpart (b) (Attempted Murder of Joel Burkett)

28 Guilty _____ Not Guilty _____



1 Racketeering Act 20 (re Jimmy Lee Inman)

2 Subpart (a) (Conspiracy to Murder Jimmy Lee Inman)

3 Guilty _____ Not Guilty _____

4 Subpart (b) (Attempted Murder of Jimmy Lee Inman)

5 Guilty _____ Not Guilty _____

7 Racketeering Act 29 (re Charles Leger)

8 Subpart (a) (Conspiracy to Murder Charles Leger)

9 Guilty _____ Not Guilty _____

10 Subpart (b) (Murder of Charles Leger)

11 Guilty _____ Not Guilty _____

13 Racketeering Act 30 (re Narcotics Distribution at
14 Leavenworth)

15 Guilty _____ Not Guilty _____

17 Racketeering Act 34 (re Conspiracy to Murder Walter Johnson)

18 Guilty _____ Not Guilty _____

20 Racketeering Act 37 (re Conspiracy to Murder Black Inmates)

21 Guilty _____ Not Guilty _____

23 COUNT TWO (RICO Conspiracy, 18 U.S.C. § 1962(d))

25 Guilty Not Guilty _____

27 (Proceed to Count Three.)

1 COUNT THREE (VICAR Offense re Charles Leger, 18 U.S.C. § 1959)

2

3 Guilty _____ Not Guilty _____

4

5 (Proceed to Count Six.)

6

7 COUNT SIX (VICAR Offense re Frank Joyner, 18 U.S.C. § 1959)

8

9 Guilty _____ Not Guilty _____

10

11 (Proceed to Count Seven.)

12

13 COUNT SEVEN (VICAR Offense re Abdul Salaam, 18 U.S.C. § 1959)

14

15 Guilty _____ Not Guilty _____

16

17

18 DATE: 10/20/08, 2008

50095-3928
Foreperson

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EXHIBIT D

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

3 HONORABLE VIRGINIA A. PHILLIPS

4 UNITED STATES DISTRICT JUDGE PRESIDING

5 - - -

6 United States of America,)
7 PLAINTIFF,)
VS.) NO. CR 02-938(A) VAP
8)
9 David Sahakian,)
 DEFENDANT,)
10)
-----)

11

12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14

RIVERSIDE, CALIFORNIA

15

WEDNESDAY, OCTOBER 8, 2008

16

VOLUME I

17

JURY TRIAL

18

19

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21 KATIE E. THIBODEAUX, CSR 9858
22 U.S. Official Court Reporter
23 312 North Spring Street, #436
24 Los Angeles, California 90012

25

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1 RIVERSIDE, CALIFORNIA; WEDNESDAY, OCTOBER 8, 2008

2 9:00 A.M.

3 - - - - -

4

5

6

7 (The following proceedings were held in the
8 presence of the jury:)

9

10 THE CLERK: Criminal case 02-938 A VAP, United
11 States of America versus David Michael Sahakian.

12 Counsel, please state your appearances for the
13 record.

14 MR. WOLFE: Morning, your Honor. Steven Wolfe and
15 Joseph Akrotirianakis for the government.

16 MR. SHOSTAK: Bert Shostak for the defendant David
17 Sahakian.

18 MR. GREEN: Joel Green for defendant David
19 Sahakian.

20 THE COURT: Let the record reflect also the
21 presence of all members of the jury, and you may argue,
22 Mr. Shostak.

23 MR. SHOSTAK: May it please the court, counsel,
24 and especially you, Mr. Sahakian.

25 I want to start by reminding you that we are

1 all descendants of revolutionaries. We have the benefit
2 of their bravery, of their fortitude and their
3 intelligence in putting together a document called the
4 Constitution of the United States.

5 As part of the government that they have
6 willed to us, the judicial system, which judges and
7 lawyers and all alike acknowledge it is not a perfect
8 system. I don't hesitate to tell you is the best system
9 in the world, and you, members of the jury, are an
10 integral part of that system because it is you who must
11 weigh the evidence in this case. It is you who has to
12 weigh the credibility of witnesses in this case, and it
13 is you who have to find the facts beyond a reasonable
14 doubt and apply them to the law as given to you in the
15 instructions by Judge Phillips.

16 Now, for the approximate two months that you
17 have sat here, you have traveled to a number of places
18 that I dare say most of you, if not all of you, have
19 never been, places like ADX, Marion, Folsom, Lewisburg,
20 Atlanta, Leavenworth, Pelican Bay, San Quentin, Chino,
21 Corcoran, penitentiaries to which I think I bet my bottom
22 dollar none of you have ever been to.

23 The evidence has also introduced you to groups
24 of people that perhaps you didn't know about before, and
25 if you heard of them, it was in passing, but you heard of

1 them for approximately two months. The Aryan
2 Brotherhood, or the Brand, the Dirty White Boys, the DC
3 Blacks, the Black Guerrilla family. The El Rukns, the
4 Gangster Disciples, the Crips and the Bloods. I think
5 the last two you have probably heard of.

6 The evidence has given you a guided tour into
7 the most secure penitentiaries that we have in the United
8 States, and that is an interesting tour because what you
9 found out when you went to Marion and when you went to
10 Lewisburg or Leavenworth is this. The people there who
11 are incarcerated live in a room that is about 8 by 10.
12 It has a concrete bed with a very small mattress, thin
13 mattress on top of it. It has a concrete desk top that
14 is, just comes out of the wall, it is just part of the
15 wall, and a chair that they have to sit on to use. That
16 desk is nothing more than a round small concrete post.
17 The shelf that they have to store their things on is made
18 of concrete.

19 Needless to say, the floor is concrete. The
20 only thing that isn't concrete in that cell is the
21 toilet, the sink and the grill door that slides back and
22 forth electronically. The only light that they have in
23 that cell is on a back wall. You have seen pictures of
24 it. It is a small light on the back wall or the light
25 that shines in beams in through the windows from across

1 the hall from where their cells are or the lights that
2 are simply there on the ceilings that are electric.

3 Your mail is monitored, and your telephone
4 calls are monitored. Cameras are all over. Certainly,
5 at Marion, there is a camera at the back and front of
6 every range. At ADX, which you know opened sometime
7 around 1994, '95 is even more secure. At ADX, the cells
8 have a solid electronically monitored door that is heavy
9 metal that slides back and forth, and it was described to
10 you, it has got a window in it that is much taller than
11 it is wide.

12 After you go through the doorway and you step
13 into the cell, you are into what they call a sally port,
14 a place that is about 3 or 4 feet wide and the width of
15 the cell which is no more than about 8 feet. A tall man
16 with an arm span could probably touch both sides of the
17 wall.

18 After the sally port, you are not just in the
19 cell because at that point there is a grill gate that
20 goes back and forth electronically the same as they have
21 the outer gate at Marion. You don't even have, at ADX,
22 the luxury of walking down the hall to take a shower
23 because they have got a shower built in your cell.

24 Those places are places where communication is
25 difficult, and it is difficult for a number of reasons.

1 One, you don't, at Marion, get to mingle with people as
2 though you mingle in your room before you come in here
3 and the courtroom, as you mingle with your friends or
4 with your family at home. You don't get to mingle. You
5 are in your cell 23 hours, 22 hours a day. At ADX, it is
6 the same thing, only you are more enclosed.

7 And so you have to put up with the bravado and
8 the grapevine and the rumor mills and the gossip and the
9 embellishing and also the purposeful use of
10 misinformation. It is in this -- it is in this
11 atmosphere that the federal Bureau of Prisons houses
12 inmates and convicts, and I tell you that not because
13 they shouldn't be. I am not advocating that. I am
14 telling you that so that you can understand who these
15 people are who take that witness stand and tell you
16 things and where they come from.

17 It is the same as if I had told you, look, I
18 want you to go into your bathroom, and I don't know how
19 big your bathrooms are, but it is about 8 by 10, go into
20 your bathroom, maybe smaller and just stay there for 23
21 hours, and when it comes time, I will unlock the door and
22 let you out for an hour, or if you want something to eat,
23 let me know and I will slip it through a tray slot for
24 you because it is built into the grill door.

25 It is in this atmosphere that weapons are

1 hidden. That probably came as a surprise to many of you
2 as to how dangerous these places were. Weapons? At
3 Marion? At ADX? People getting killed? That is
4 something that I dare say you have thought about before
5 you got into this case, but those are dangerous places,
6 and a great many of the people there are extremely
7 dangerous people. So you understand it.

8 Now, I haven't really had to tell you that.
9 The government witnesses told you that. Your friend
10 today at ADX at Marion or Leavenworth may try and kill
11 you tomorrow for the very, very slimmest of reasons.
12 Criminal acts are an everyday occurrence. West told you
13 that, Healey, Shaw, Roach, Whitey, Bolen, Williams, they
14 all told you that, those government witnesses.

15 Mr. Green and I didn't call those people. The
16 government did. Now, some of you, at least my experience
17 has taught me, probably why my hair is gray, that you
18 probably are sitting there thinking who cares, who really
19 cares? He has been convicted before. He has been in
20 jail. So what? What has that got to do with me? Why am
21 I sitting here giving up my home, my family, my children,
22 my job to sit in this courtroom for about two months
23 roughly and listen to facts about people in a
24 penitentiary. Why do I care? Who cares?

25 Well, if you don't care, then I tell you that

1 you make a mockery of our judicial system. If you don't
2 care, I tell you that you are not following the
3 instructions of Judge Phillips as were given to you and
4 the oath that you took as jurors.

5 And if you don't care, you have disrespected
6 all of the young men and women that we have lost through
7 the years in order for you to be able to sit in that jury
8 box and listen to the evidence. Now, you may say, boy,
9 is that a bunch of corn. Is that corny. Is that, at
10 some point. Well, I tell you this, tell it to the
11 people, to the families to whom those kids didn't come
12 home and see if they think it is corny. This jury system
13 that we have is the best jury system anywhere, and you
14 are a part of it.

15 Now, let me tell you a few things about this
16 case. The first one is this. Argument is not evidence.
17 Evidence came from that witness stand. Those people who
18 sat up there and testified under oath after Ms. Dillard
19 gave them the oath, that is where evidence comes from.

20 It comes from no place else. Secondly, let me
21 tell you this. Culture is not a conspiracy. The way
22 people live is not a conspiracy. The way they have to
23 live is not a conspiracy. There is nothing unique about
24 what the Aryan Brotherhood does that other people in
25 those institutions that I discussed with you a minute ago

1 do. And, furthermore, you were told that belonging to
2 the Aryan Brotherhood is not a crime. Well, how does the
3 government try and prove this case? By two distinct
4 groups of people, one, people who work for the
5 government, and who doesn't like to please an employer,
6 and, secondly, those who have been convicted of crimes
7 before or are convicted of crimes and serving time now.

8 People who have killed or murdered, robbers,
9 burglars, thieves, perjurers. Those people attempt to
10 support the charges that the government has levied
11 against Mr. Sahakian, and the government brought you a
12 number of them as though quantity was better than
13 quality. Those people who took that witness stand, those
14 men who took that witness stand who are either
15 incarcerated or were incarcerated are criminals who know
16 how to manipulate the criminal justice system and are
17 more willing to sit in that witness chair and spew out
18 lies and half truths than anything because for some of
19 them, it was really a great break, but let me leave you
20 with this thought to take to the jury room. A half truth
21 is a whole lie.

22 Now, let's take a look at some of these people
23 upon whom the government has relied to tell you that
24 David Sahakian ought to be convicted. Glenn Speedy West,
25 we heard about him for two hours and 20 minutes yesterday

1 as though he would be the big man in what is called the
2 Aryan Brotherhood. He has robbed four or five banks. He
3 has attempted escapes. He kidnapped two police officers.
4 He has possessed weapons, and he served 30 years of time
5 in a federal penitentiary.

6 Now, Glenn West was an interesting fellow
7 because you see Glenn West was indicted in this case for
8 killing Arva Lee Ray. He told you that. So they indict
9 him, and they have a bond hearing.

10 I don't know if any of you know what a bond
11 hearing is, but it is a hearing where you immediately go
12 before some judge who determines whether if you can put
13 up enough cash or collateral will let you get out,
14 pending your trial. He goes to a bond hearing.
15 Everybody has one.

16 He goes to a bond hearing, and the government
17 at that bond hearing tells the court, hey, wait a minute,
18 no, no. Glenn West, he was involved with the attempted
19 murders of Jimmy Lee Inman and Joel Burkett. They are
20 not letting a guy like that out. They oppose that bond
21 hearing. They oppose it vigorously. However, the judge
22 sets a bond, but the bond that is set is too high
23 monetarily and West can't meet it. So he stays in jail,
24 and while he is in jail, they give him what is called
25 discovery. They give him papers.

1 You have seen this place has been filled with
2 papers. They give him those papers, and he takes a look
3 at those papers and he reads those papers and he says,
4 oh, I got a problem. I got a big problem. I better
5 strike a deal with the government. Now, what happens.
6 The government agrees to let him plead guilty to an
7 attempted murder of Robert Wilson that he supposedly
8 committed in 1980, and he does that on August 20th, 2003.

9 Okay. The charges against Inman and Burkett,
10 gone, and he hasn't been sentenced yet. Why do you think
11 that is? Think about that. By written agreement, the
12 government drops the charges in this case against him,
13 and, low and behold, he gets out of jail on bond, not by
14 putting up money, not by putting up his house or
15 relative's house, some collateral, he gets out on a
16 signature. You are out of here. And you know how long
17 it takes? 10 days. It takes 10 days for that to happen
18 and for him to walk out of a jail after he decides to
19 cooperate.

20 And, then, on top of it, they tell him, well,
21 we better protect you. We are going to put you in the
22 wit sec program. Now, if there every was a con and a
23 criminal hustle, it is the use of the wit wec program.
24 The term may not be used around here in California, but
25 the wit sec hustle is a term that people like that, like

1 those people that sat on that witness stand, know about.

2 Let me tell you about the wit sec hustle. Let
3 me tell you what they got. Let me tell you what West
4 got. For two years, I couldn't find a job. Well, the
5 government says, gee, that is a shame. Well, we will
6 just pay you \$2,040 a month for not being able to find a
7 job for two months. Oh, okay. They will do that. They
8 will do that. That is over \$48,000. Mr. West, you pay
9 tax on that money? No. It is tax free. So it is over
10 \$48,000, and it is tax free. Okay.

11 Now, he says, hey, that includes my rent.

12 Okay. That includes your rent. They relocated him.
13 They paid for his clothing. They paid for his furniture,
14 and they paid for his medical bills. And you recall that
15 he said, I had quite a bit of medical expenses in the
16 past year. That is all taken care of. That is all done
17 for him. Okay. In addition to that, here is \$10,000, go
18 by yourself a car. Fellow needs a car to get around. Go
19 buy a car. So they gave him that.

20 Oh. They also paid for his tattoo removal.
21 Okay. In addition to everything that they have given to
22 these people who are in wit sec and who have done this
23 dance, this hustle, the slate of their criminal history
24 is wiped clean. He gets a new social security number.
25 He can have a new name if he wants it, and when he gets a

1 job application that says have you ever been convicted of
2 a crime, he can say no, and it is perfectly alright
3 because they can check him from now until the cows come
4 home, they are not going to find there is any crime
5 because his slate has been wiped clean.

6 I think Glenn West has made more from wit sec
7 than he did from robbing banks. Now, he is with a number
8 of people in the prison, and he talks about John Gotti as
9 though he knows what he is talking about, and he says
10 that John Gotti offered a million dollar contract to have
11 Wahkil Johnson killed. He is the only person that said
12 that. The only one. And I think that is because a con
13 can't corroborate a con.

14 In addition, West is supposed to be the guy
15 protecting Gotti. Remember that? Had all that evidence
16 about how Gotti was to be protected. West was going to
17 protect him, I will protect him.

18 And what happens? Gotti gets assaulted while
19 he and West are coming in from rec. West says that in so
20 far as Mr. Sahakian is concerned, he had no authority to
21 act for the Aryan Brotherhood, and West, don't forget,
22 didn't leave custody of the federal government until
23 about the year 2000. Now, he is one of five counselors,
24 he says, one of five. So he is somebody who ought to
25 know how the Aryan Brotherhood works, and that is totally

1 inconsistent with what Jessie Van Meter told you which is
2 that 1999, David Sahakian was made a member of the
3 commission.

4 Brian Healey is a man who was a state prisoner
5 and only a state prisoner who told you that he exchanged
6 information for immunity. You give me immunity, I will
7 talk. You don't give me any, I am not talking. And the
8 immunity agreement that he had was a long one, and you
9 may recall when I went over it, it had -- it was long.

10 They transferred him to the federal system.
11 This is a state prisoner here in California. They
12 transfer him where? To ADX in Colorado. And where did
13 they put him? In a place called H unit, and why did they
14 put him there? It is not just because somebody threw the
15 dice out on the table and a number came up. He is put
16 there for a reason. And the reason he is put there is so
17 that the government can tell you that, you see, the state
18 and the federals are together. That is why they put them
19 together at ADX in H unit.

20 Now, H unit is an interesting place. H Unit
21 has cells for about 30 people, and there is only six guys
22 living in it. Security is nothing compared to what they
23 have at ADX or at Marion or anywhere else for that
24 matter. When the grills open in the morning, these guys
25 are out in the unit. They can walk around, they can talk

1 to one another, they can sit at tables that are out in
2 front of their cells. They can do -- they are free to
3 talk to one another.

4 As Healey said, we had free rein of the unit.

5 Who had free rein of the unit? Healey, Vought, Weeks
6 Bernard, Bentley and Roach. Six. And in addition to the
7 free rein of the unit, they get to see movies that they
8 don't get to see at ADX and at Marion. He didn't want to
9 say so, but some of them were a little raw.

10 Roach and Bentley, while they are in H Unit,
11 they get a lot of reports to review. They are reviewing
12 a lot of documents, and Healey says, well, we never,
13 never talked about this case. Never talked. What did
14 you talk about then? The weather, whether or not the
15 Dodgers can win the penant, whether or not the Angels can
16 do any good. What are you talking about if you are not
17 in there for that very purpose? Well, why are you in
18 there, Healey? Let me tell you, me, personally, I would
19 work with Gene Bentley, we would paint, scrub floors in
20 the building, do whatever it took.

21 Hobby craft was, we learned to crochet, and
22 then as far as the intell stuff goes with the training
23 tapes, we were making weapons and things of that nature.
24 They were doing that as a show to people who came in. So
25 let me see if I got it straight. They took a guy out of

1 a state prison in California, put him in H unit in
2 Colorado so he could learn how to crochet? Give me a
3 break. We know exactly why he was there, and you know
4 why he was there.

5 Now, Shoff and Daneen Adams were there every
6 day almost to see Roach and Bentley. Roach uses
7 Mr. White, the counselor's computer in Mr. White's
8 office. Roach's printing off of it. Roach has his own
9 laptop computer, and we are talking about 1998. And
10 Shoff warns Roach. He warns him, calls him. Gets him on
11 the phone, says, hey, Miss Grundy is coming up there,
12 hide it, get rid of that laptop computer. That is Shoff
13 telling Roach that, telling him that. Go ahead and hide
14 it. Well, he if he has to hide it, why did he give it to
15 him in the first place?

16 Shoff is the SIA. Shoff warns him about
17 shakedowns. They are coming up to search your place.
18 Shoff was the driving force behind H unit. You recall he
19 brought a box of files about the AB up there, gave them
20 to Roach. They got a problem with that. Forget the
21 problem that Shoff brought the files up there. The
22 bigger problem is that some of the files are missing.
23 You were told that Shoff has prisoners open the mail with
24 a steam iron, and they jokingly referred to it as iron
25 therapy.

1 And Healey tells you all of this with a
2 straight face as though this is the way the system is
3 supposed to work. This is how those people who you saw
4 testify make themselves bigger than they are. This is
5 how Healey says, I am caught with C4 in a body cavity of
6 mine, and so they fired me. Eugene Bentley robs banks.
7 He robbed them in 1983. He got out of federal
8 penitentiary in 1987. He cooperated with the government,
9 and he goes back into robbing banks in 1990, and he gets
10 caught. And now he gets a 45 year sentence.

11 Now, he never told anybody in the AB that he
12 had cooperated with the government before, and he lied to
13 the federal grand jury who was investigating his second
14 robbery. He did tell you that. Now, the government kept
15 asking him about the structure of the AB because they
16 need a structure to the AB in order to make the elements
17 of a Rico case. They need a structure.

18 While he is being asked about structure, he is
19 telling everybody about, yeah, there was a lot of
20 structure, the guys used to sit around there and we used
21 to eat together, and we used to hang around together.
22 And that is the structure he is talking about, not the
23 structure that is used in the legal sense. And no matter
24 how many times you say to people there is a structure, if
25 you don't have one, you can say it from now till

1 doomsday, you don't have one.

2 What you also have to remember insofar as
3 structure is concerned and what happened is that Roach
4 told you Barry Mills was a dreamer. He used to think up
5 a lot of things, but nothing happened. Now, when you
6 take a look at the government's Exhibit 5 which is a list
7 of AB members taken from the property of TD Bingham who
8 is at ADX, you will notice that Bentley story and
9 McGinley weren't on that list. What did Bentley get for
10 testifying? Well, he gets safety which they have to give
11 him anyway. They have to keep him safe. And a rule 35,
12 and you have heard about a rule 35.

13 So rule of criminal law, the government and
14 only the government can do this, files papers with the
15 court saying that the person who is a defendant in the
16 case or a person who they want to have this happen to has
17 cooperated with them substantially and has been
18 substantially truthful with them, and they ask the court
19 to cut that person's sentence.

20 Now, government determines whether or not they
21 are telling the truth. You don't. They do. The
22 government determines whether or not they cooperate
23 substantially. You don't. They do. And so a number of
24 these people get their sentences cut, and when? After
25 you are gone, that will occur. That is when that

1 happens. You won't know about it.

2 Bentley is a man who you recall is a family
3 man. He loved his wife, particularly when she came to
4 visit him because she smuggled drugs into a penitentiary.
5 So you have to wonder about a man who lets his wife do
6 something like that.

7 Chris Risk. He is a man who went to Penn
8 State, didn't like it and decided to rob banks. That is
9 because he was going through a philosophical crisis. I
10 have to tell you that I am totally inadequate when I tell
11 you that I can't explain to you what a philosophical
12 crisis is. I didn't understand it when I asked him to
13 explain it, and I don't understand it fully yet. So I am
14 not going to go there with you except to say that that is
15 what he said he underwent, a philosophical crisis. It
16 got better, it got worse. Then it got better.

17 Now, he is the guy who was in the hole with
18 Mills, and he is the guy who took an exact message from
19 Mills to get to Bingham, and you remember all of that
20 stuff about the mop handle and all of that stuff, and he
21 put the message in a mop handle, and the message was it
22 is war with the DC Blacks. That is the message.

23 Exactly. That is exactly the way he memorized
24 it. That is exactly what he told you. He was a little
25 shook when Mr. Shoff called him a couple of days later

1 and said I want to talk to you about that message that
2 Mills gave you, and the antenna went up because he knew
3 then that he had a problem. He knew then that they,
4 obviously, Shoff knew about him. What was the message
5 that Mills gave you to send? And the message is a simple
6 message, and it goes something like this.

7 Know how to do all of this.

8 Showing exhibit.

9 The toads put a hit on Dave and Mac, the war
10 is on, let Lewisburg know. That is a lot different from
11 it is war with the DC Blacks for which you might say that
12 is a war, or it is a warning. That message is a lot
13 different, and that message is the message that Mr. Shoff
14 gave and wrote.

15 Charles Moorman, Junior is a 61-year-old man
16 who is a heroin addict. He is a bank robber. He was
17 married, and he had three children. Told you that. His
18 22-year-old daughter was murdered, but he doesn't know
19 when that was. And I have to tell you that that bothers
20 me because I don't understand, who has a 22-year-old
21 daughter who was murdered doesn't know when that
22 occurred? Especially where the murder touched him so
23 that he went out and robbed banks and became a heroin
24 addict.

25 Now, it was interesting to me that while he

1 couldn't remember anything about his daughter and when
2 she was murdered, he remembered precise conversations and
3 things that happened while he was in the penitentiary at
4 Leavenworth. And, frankly, it doesn't ring right.

5 You know, when you watch television, you watch
6 the news, 10:00 o'clock, 11:00 o'clock news whatever,
7 they sometimes have highlights. They show you the sports
8 highlights or some highlights from the news. Somebody
9 hit a home run or somebody scored a touchdown or
10 something. This was a highlight because Charles Moorman,
11 Junior sat on that stand and told you that he fronted
12 money, that is, he loaned money to the Aryan Brotherhood
13 to buy drugs.

14 Now, this organization which they have claimed
15 since August the 12th of this year is so powerful that
16 the Bureau of Prisons has trouble handling them, they are
17 so powerful, they are involved in so many nefarious
18 schemes that they raise all kinds of money through their
19 gambling, through their drug selling, through all of this
20 stuff, that organization borrows money from Charles
21 Moorman, Junior to buy drugs, and I tell you that is
22 plain silly.

23 On cross-examination -- on cross-examination,
24 Moorman who was on the yard at the time that Storey
25 killed Leger says, yeah, I heard about the arguments

1 between Storey and Leger from Eyselle the next morning,
2 when I got up, that morning of the killing.

3 On cross-examination, he tells you Storey
4 climbed the basketball, but I tell you this. There was
5 not one eye witness around here including Moorman who was
6 on the yard who told you, yeah, I saw Storey unstrap that
7 knife from around his thigh, I saw him take it out from
8 down inside his pants. Nobody testified to that. That
9 is a big mystery.

10 The only people that say that, say that, but
11 it didn't come from that witness stand where it has to
12 come from. Jimmy Lee Inman is a burglar, a robber and a
13 parole violator convicted for interstate transportation
14 of weapons. He is a felon in possession of a weapon, and
15 he is involved in the stabbing at Lewisburg in a drug
16 deal, and as you have been told, they were carrying him
17 out, and he sees his home boy, that is, a fellow from his
18 home state, and he says "white on white."

19 Now, the home boy doesn't hear him correctly,
20 and the home boy goes back and they say, what happened.
21 They took Inman out and he said Whitey. That makes him a
22 snitch. You can't be a snitch and live where these
23 people live. They don't like it. It is part of the
24 culture. The culture doesn't allow that to be, and so
25 that is bad. But he gets out from the hospital, and he

1 tells you that a man named Wendell Norris, they call him
2 Blue, Blue Norris, sent him a note with a shamrock next
3 to his name. He signed it Wendell Norris, and he got a
4 shamrock next to his name. And that meant to him he was
5 an AB member. That is it? That is all a guy has to do
6 is send you a note, sign it, put a shamrock by it, and
7 you are a member of the Aryan Brotherhood? I don't think
8 so.

9 Now, he tells Lieutenant Snyder that he was
10 never in the Aryan Brotherhood, and you heard that on
11 two occasions, a fellow named Fortman and a fellow named
12 Kurt King tried to stab him. This is the same guy who
13 said we ought to squeeze John Gotti for money to protect
14 him. Well, that is an interesting thought. Go ahead and
15 try and squeeze John Gotti, but you are not squeezing
16 oranges. You are trying to squeeze John Gotti and that
17 is not going to happen. It is not going to happen, one,
18 because John Gotti is not going to let it happen, and,
19 two, what happened to the contract? Don't you remember
20 the contract that they said that Mr. Sahakian made with
21 Gotti that got passed up to ADX, to Mills and Bingham?
22 They are going to protect him, Gotti is going to pay the
23 Aryan Brotherhood money. What happened to that?

24 Most importantly, it is what Jimmy Lee Inman
25 doesn't say. He never mentions David Sahakian. I am

1 going to talk to you about Danny Shaw not because -- he
2 is certainly not -- but he is in that sequence. He has
3 been in the BOP for about 24 years. He's been in the SIA
4 at ADX from '94 to about 2002, and he writes the report
5 that you know he wrote that I showed you about the
6 message from Risk.

7 Now, Shaw, is the SIA, these are people who
8 talked with other SIA's and other SIS people around the
9 country. They know what is going on in these
10 penitentiaries. It is their job to know that. Shoff
11 says I don't recall who David Sahakian was affiliated
12 with in 1997. He tells you also that when Benton as we
13 call it flipped, cooperated, went over to the other side,
14 call it whatever you want, when Benton did what he did,
15 Roach, Roach became an acting commissioner. And he also
16 told you there was some sort of an agreement between the
17 warden and Agent Halualani regarding bringing materials
18 into H unit that we talked about before.

19 Daneen Adams, who was head of the Sacramento
20 intelligence unit, brought those documents from Shoff to
21 Roach and Healey to ADX. Shoff tells you H unit at ADX
22 was unprecedented in all of his years of working in the
23 system, unprecedented. He is in charge of it. He is the
24 SIA. Alan Hawley has testified seven times before this
25 case, grand theft, armed bank robbery, felon in

1 possession of a firearm, possession of methamphetamine,
2 drug user on top of it.

3 On one federal sentence, he got an 11 year
4 reduction because of his cooperation. He gets out of
5 prison after he testifies in McElhiney's case, and he
6 says I am a changed man, I have learned my ways, I am
7 changed. But he doesn't stay changed for long because he
8 goes back in prison, and, now, he is trying to use this
9 case and his testimony in this case as a means to get out
10 and change himself again.

11 So the question that I think you have to have
12 in the back of your mind when you go to the jury room is,
13 you know, if Hawley and the others like him wouldn't get
14 anything from the government and they just got a subpoena
15 like everybody else, you think they would testify? You
16 think they would come in here and tell you all of this
17 stuff? You think about that in your jury room.

18 I don't think he is looking for a good
19 citizenship award. Now, he sat in that chair, raised his
20 hand to God and swore that he believed his life was in
21 jeopardy by virtue of him having testified, to having to
22 testify against somebody in the Aryan Brotherhood. That
23 is what he told you right from that stand. Okay. He
24 told you that.

25 And so Alan Hawley runs -- that is kind of

1 neat. He runs a photo of himself. He runs that photo of
2 himself with an AB tattoo on the internet. That is how
3 fearful he is that something might happen to him. He
4 runs that on the internet, and when you go home after
5 this case is over and you go back to work and you are
6 with your families doing all of this stuff, he will be in
7 here or else asking the government to write a letter to a
8 sentencing judge asking the sentencing judge to cut his
9 sentence because he cooperated with the government.

10 Now, there were two letters that the
11 government held up yesterday that Mr. Sahakian wrote to
12 Hawley, and I want to talk to you about them because
13 there is something very interesting about those letters.
14 The first thing that you have to keep in mind is that
15 those letters never referred to the Leger homicide.
16 Nothing in either of those letters referred to the Leger
17 homicide. They were drafted after the Leger homicide,
18 but that homicide is not referred in them. And
19 unbeknownst to Mr. Sahakian, Hawley kept them. Okay.

20 They use strong language. They are not
21 speaking to Kings at Marion or at ADX or anywhere else.
22 These are tough men who are using rough language, and the
23 letter says it. Okay. So it says it. And Mr. Sahakian
24 had the perfect opportunity to say to Hawley, either do
25 what I am telling you or what happened to Leger or Leger

1 can happen to you. They didn't say anything about that
2 because he was no part of Leger's homicide anymore than
3 Hawley was.

4 Greg Storey. Greg Storey is is a bank robber
5 who gets out in 2014. That is his out date for the bank
6 robbery. After he gets out in 2014, they take him back
7 right back in because he has got to do 33 months for
8 escape, and as soon as he is done with that 33 months, he
9 does 25 years after that.

10 There is no question from the evidence in this
11 case, none, that he didn't get along with Leger. They
12 argued regularly. People from both sides told you that,
13 and they argued at night particularly when they got
14 drunk. They argued up a storm, and it is tough in those
15 SHU's when you are arguing because you got doors and you
16 really have got to be talking loudly, and they were.

17 People in the SHU who were there the night
18 before told you what was going on, and those people that
19 we brought in that told you what they heard, get nothing.
20 I can't give them anything. Mr. Green can't give them
21 anything. If we tried, we would be indicted. So we
22 can't give a witness anything even if we wanted to. They
23 came in here and said, yeah, they were yelling their
24 heads off.

25 Storey pleads guilty to second degree murder

1 in 1995, and then he waits 11 years, 11 years. He sits
2 in a penitentiary and waits, and then he decides, whew, I
3 have seen what all these other guys are getting, I better
4 go cooperate with the government. And what does he say?
5 What do you need? He says, Mr. Sahakian told him to kill
6 Bubba. I don't think he waited 11 years because he was
7 an outstanding citizen who wanted to come forward with
8 news of the crime.

9 I think, really, that he is doing that to
10 improve a very, very horrible situation with his
11 lifestyle because if he doesn't, and if he doesn't get
12 anything from the government, and you will never know if
13 he does or not, but if he doesn't, he is going to die in
14 prison.

15 Keith Segien is a man you will recall, kind of
16 tall, gray haired fellow sat up there -- didn't want to
17 be here, that was clear -- came from Florida. He had
18 difficulty remembering some things. He is a man, you
19 will recall, that took no part in the January 2nd, 1997
20 rec yard fight. You remember, there was testimony about
21 how there was a fight and Keith Seegan was just standing
22 there. He said, hey, that is not my fight. I am not
23 getting involved in that. So he is a man who writes a
24 letter to AUSA, that is assistant United States Attorney,
25 Lucky Kansas, telling him that Ziggy and Bubba are mad

1 that Ziggy -- that Troy and Ziggy are mad at Bubba for
2 not giving them any dope and that they were going to hurt
3 Bubba.

4 So I just want you to see, first off, that
5 there is such a letter which there is, and, secondly,
6 that is what he is talking about. Ziggy and Troy not
7 giving anything, the dope to Bubba, and they are going to
8 hurt Bubba. And if anybody knew how to use dope, it was
9 Gregg Storey.

10 Russell Lee Hale had been convicted of theft,
11 assault, drug crimes, two bank robberies and escape. And
12 before testifying at Mac's sentencing hearing, he makes a
13 deal with the government to where they will consider
14 giving him a rule 35, and they will place him near his
15 family in Oklahoma where he wants to be.

16 "Question: And that was one of
17 the things you wanted in exchange for
18 giving them the testimony they
19 wanted; correct?

20 "Answer: Yeah."

21 He is in a rec cage in the SHU with
22 Mr. Sahakian after Leger has been killed, and he says
23 Sahakian said to me what happened. Well, that begs this
24 question. If that is what Mr. Sahakian asked him, then,
25 he wasn't involved in that murder, was he? He is not

1 just asking questions to be asking them. He is asking
2 what happened, and if he was involved in the murder, why
3 would he ask him? He would know what happened. But he
4 didn't. He asked him that question. That is what
5 Russell Lee Hale says happened.

6 Then Mr. Sahakian talks to him some more, and
7 he says, listen, we need you to write, I need you to
8 write an affidavit for Mr. McElhiney, excuse me, for
9 Mr. McElhiney about Leger's killing. And he has a
10 misunderstanding with what Hale tells him, and he says I
11 want you to write in there, include in that statement
12 that Hale saw Bubba Leger with a knife. Put that in that
13 affidavit.

14 Hale says, no, I didn't see him with a knife,
15 and I am not putting it in the affidavit. And he wrote
16 the affidavit, and he didn't put it in there. And you
17 know what happened after that? Because he didn't put it
18 in there. Nothing. Nothing happened. Mr. Sahakian did
19 absolutely nothing. He didn't threaten him to rewrite
20 the affidavit. He didn't assault him. He didn't do
21 anything. And I suppose that the government believes
22 that two guys in prison talked to each other and perhaps
23 had a miscommunication. That can happen when it fouls up
24 the government's theory of the case.

25 John McGinley. Let me tell you about John

1 McGinley. John McGinley as he sat on that witness stand,
2 had that little smile. Remember the little smile. He
3 gave me the little chuckle, how he used to chuckle, is
4 one of the coldest killers you will ever see. And he is
5 living in the community. He is out. I don't know where,
6 but I will tell you this. He is somebody's next door
7 neighbor.

8 He was extremely close to Kevin Roach,
9 extremely close, and he tells you that he made plans with
10 Roach, and what they are going to do is they don't like
11 the direction, as Roach put it. They didn't like the
12 direction. They didn't like what was going on in the
13 Aryan Brotherhood, and they didn't like the way Mills was
14 running it. We didn't like the direction that it was
15 going, and so here is what we are going to do.

16 We are going to kill Mills and Bingham. And
17 as soon as we kill Mills and Bingham, we will have
18 two vacancies on the commission. Who do you think would
19 fill the vacancies? They say, well, McElhiney and
20 Sahakian. And then what we do, as he sat on that witness
21 stand and looked at this table and Mr. Sahakian, said we
22 will blame the killings of Mills and Bingham on McElhiney
23 and Sahakian, and then we will kill them.

24 That way, he and Roach can take over this
25 group of 40 or 50 people called the Aryan Brotherhood,

1 and I don't see that he was ever charged with any
2 conspiracy with Roach for those thoughts. I only know
3 that Mr. Sahakian apparently is the only one who they
4 want to go to prison for someone else thinking.

5 Daneen Adams. Talk about her because that is
6 where she fell in place because of the secrets. She was
7 head of the Sacramento intelligence unit. And her rise
8 to that unit was meteoric. She started about six or
9 seven years before as a secretary and becomes the head of
10 the Sacramento intelligence agency in charge of a group
11 of people who monitor what they call disruptive groups in
12 the federal penitentiary system. She never mentioned
13 David Sahakian in her direct examination.

14 She is in charge of people who monitor over
15 a hundred disruptive groups, and with all -- with all of
16 these people who are talking to the government and all of
17 the government investigators and the SIA's and the SIS's
18 and all of these people who are in these penitentiaries,
19 she sat there and said to you, I didn't know anything
20 about McGinley and Roach wanting to take over by killing
21 Mills and Bingham and then McElhiney and Sahakian. That,
22 apparently, didn't hit her radar screen.

23 Kevin Roach. Kevin Roach is a killer so
24 violent that the state of Massachusetts couldn't handle
25 him. So they transferred him to a federal penitentiary.

1 That is why he is here, and all the talk that there was
2 about how it is structured is just that. Talk.

3 See, Roach had some grand ideas. Roach says
4 we are going to have three commission heads. We are
5 going to have a head counselor, a counselor,
6 four department heads: Drugs, gambling, business and
7 security. We are going to have them. Then we are going
8 to have two lieutenants. Then we are going to have a
9 crew chief, and then we are going to have at least
10 three soldiers, more, but at least three. Okay. And we
11 are going to have them at ADX, Marion, Lewisburg,
12 Leavenworth and Lompoc. Good. That is fine.

13 You got a problem, Mr. Roach, at 63 people,
14 and there aren't 63 people in the Aryan Brotherhood.
15 Now, Roach finally tells you, it was just a thought, it
16 was a plan, and it never got off the ground. You were
17 also told Roach is going to spend his dying days in
18 prison. That is probably true. I don't know that I
19 doubt -- I don't doubt that. I think he will.

20 But don't tell me that he didn't get anything
21 for his testimony because he was paid monthly for a
22 number of years because this is the guy who when he
23 decided to cooperate had about 23 cents on his books. So
24 he is paid monthly, and I believe he is in what they call
25 a soft prison. He has been transferred to some place

1 which makes his life more bearable.

2 Dewey Lee is a bank robber except when he
3 assaulted two people with a pipe and cranked them in the
4 head. His wife also brings drugs into the penitentiary.
5 He was at Lewisburg, and he says he brought a message to
6 McElhiney. He didn't bring any message to Mr. Sahakian.
7 He brought it to McElhiney. And the message was we are
8 having trouble in Lewisburg, get ready. Allan Benton
9 says never happened, not in a million years. Didn't
10 happen. And who would know better than him?

11 On top of this, the message that Dewey Lee
12 says he brought, he brought 4 months late, and it is
13 Benton who is from New York as he told you he was and had
14 ties to organized crime as he told you he did, who
15 doesn't know anything about the Gotti contracts,
16 although, according to the government, he is on the
17 commission. Stabbing is a way of life in these
18 penitentiaries with shanks they call them. Some are big,
19 some are little, but when they stab you, they stab you.
20 And Lee was an excellent stabber. He decides he is going
21 to cooperate with the government, and because of that, he
22 is in charge in this case for any of the crimes that he
23 committed. Now, that is not a bad thing really.

24 You will also recall Lee is the guy who says,
25 guy upstairs in the cell from me was driving me nuts. He

1 kept banging on the floor. It is a concrete floor. The
2 guy upstairs Gizmo Jones, Gizmo was banging on the floor,
3 and I knew he was doing it because he wanted to come
4 through the floor and attack me. Really. He doesn't
5 know Gizmo Jones, and Gizmo Jones doesn't know him.

6 You heard from Michael Barton, felon in
7 possession of a weapon during a drug crime, and he is an
8 armed career criminal. And he is not a member of
9 anything, dirty White Boys or the Aryan Brotherhood. He
10 has no idea of how the Aryan Brotherhood is structured,
11 but that certainly doesn't stop him from testifying about
12 it. Because what he says is when Al Benton went to
13 Marion in 1995 and 1996, David Sahakian was the shot
14 caller. I want you to picture what I just said. Picture
15 that in your mind.

16 David Sahakian is the shot caller according to
17 the government, the man in charge of all the AB's at
18 Marion, and Al Benton is there. And he is going to it
19 tell Al Benton how things are going to go. You think
20 about that, and it is close to comical.

21 Well, Mr. Barton, how did you live there at
22 Marion? With weapons. Everybody had weapons. You would
23 rather have it and not need it than need it and not have
24 it. What a great slogan. Some company ought to pick
25 that up. That is a great slogan. The fact of the matter

1 is they all had weapons, and that is what he is telling
2 you.

3 He tells you about Gotti and the \$10,000
4 contract that Gotti had, not the 50, not the 500,000, not
5 the million dollars. And certainly not we are going to
6 squeeze him to get money out of him. What that proves is
7 there is no contract. And he says that in January 2nd,
8 1997, when the fight occurred on the rec yard in E unit
9 at Marion, the Dirty White Boys wanted to go to war with
10 the DC Blacks. The Dirty White Boys wanted to go.

11 Let me tell you so there is no
12 misunderstanding, no matter how the government tries to
13 get them married, the Dirty White Boys is a separate and
14 distinct organization from the Aryan Brotherhood, totally
15 separate and distinct.

16 Now, I got to tell you about Markum Fitzhugh
17 because I really kind of good a kick out of this guy. He
18 is a story unto himself. Fitzhugh comes to Marion on
19 April the 17th of 1997. He is assigned to I unit, A
20 range. And the person who is the orderly at the time who
21 they tell you goes around at night and brings you hot
22 water for coffee and stuff and so forth, the person who
23 is the orderly when he gets to I unit, A range is David
24 Sahakian. He is new.

25 Mr. Sahakian goes up to Fitzhugh, I am David

1 Sahakian, how are you, what is your name. Fitzhugh, nice
2 to see you. Chats with him. Lets him go. Talks to him
3 for several days. Sees him on the range. And then
4 Fitzhugh tells you this tale. That night, Mr. Sahakian
5 came out, he asked me to do a favor. I said, what can I
6 do for you? He said, well, since this incident has taken
7 place between the DC people and white people, it is hard
8 for us to get messages to the compound, to the general
9 population.

10 If you go out to the general population, will
11 had you take a message? I said, yeah, I had no problem.
12 He says when you get to the unit, ask any of the white
13 boys in there if Terry Wright, Ricky Williams or Scotty
14 Martin is in that unit. If one or all three of them
15 people are in that unit, tell them go to the rec yard,
16 that you have a message from Big Dave. I told him I
17 would.

18 He told me what you tell them is that if they
19 run across Butch Johnson, Supreme, Little Man, and
20 Canine, that they are to book them and take them out
21 immediately. That is the story he tells you from that
22 witness stand.

23 Now, let me show you this.

24 At that same time, you have seen these
25 documents nine million times before, and you see that

1 Markum Fitzhugh up on top, right there, is in IA02 cell
2 on 4/17/1997 at Marion. See that? Okay.

3 You also see that on or about that same
4 day -- put this one up -- David Michael Sahakian is at
5 Marion, in I unit, A range, cell 14, during that same
6 period of time, from the 14th to May the 8th, April 14th
7 to May the 8th. Say, okay, well, that is what the guy
8 said. Well, what got me was this. Richard Lee Williams
9 is at Marion in I unit, A range, cell 13 on the 14th
10 through May the 14th as well.

11 So let me see if I got this straight,
12 Mr. Fitzhugh. Mr. Sahakian, who is the orderly, who has
13 free range to walk around in front of the cells and talk
14 to everybody, knows everybody in there, knows who is on
15 the range, and who is on the range but the people, but
16 one of the people he tells you he wants you to give a
17 message to. You don't think that the orderly,
18 Mr. Sahakian, if he wanted to talk to Ricky Williams,
19 would simply go over and talk to him?

20 Fitzhugh said Sahakian never told me there
21 was any rush about talking to these people. Beside all
22 of which Fitzhugh didn't know where he was. He had just
23 gotten there. He had only been there for about three or
24 four days. He doesn't know any of these people. He
25 doesn't know the complex of the buildings. He doesn't

1 know where he is. And he is going to go look for
2 three people, one of whom is on the range with the
3 orderly.

4 Now, Fitzhugh tells you he is looking for
5 Williams, and Williams is there. And that made no sense
6 to me whatsoever except for the fact that what it shows
7 you is that witnesses get up and talk about things for
8 which they have no real knowledge.

9 They just get up and talk to you, and the
10 government lets them. Those are government papers. I
11 don't have those at home. They are not my papers. Those
12 are Bureau of Prison papers. They don't know where those
13 three people are? They can't find out where those
14 three people are? Something is wrong, that he gets on
15 the stand, and tells you that, and they want you to
16 believe him in an effort to put this man in a
17 penitentiary.

18 Ricky Williams committed six bank robberies
19 and served short of 20 years. He listed all kinds of
20 crimes. I am not going through them, but he starts at
21 Leavenworth. He goes to ADX for disciplinary problems,
22 and in 1996 he gets to Marion.

23 Now, when he gets to Marion in 1996, they
24 have got some racial conflict going on. And in
25 retaliation for the January 2nd, 1997 rec yard fight, he

1 stabs Keith Wartman on February 28th of '97. Wartman's
2 name is not on any so-called hit list. He just happened
3 to be handy. So he stabbed him.

4 He also says that after January 2nd, 1997, it
5 paid to know who was on the tier where you were being
6 moved to. And you remember that Mr. Green and I asked
7 those people about watch your back because you want to
8 know what who did what to who before you get there. That
9 is why we asked that question, and Ricky Williams
10 confirmed what we told you. You want to know what is on
11 the tier before you get moved.

12 And his position, is, by the way, if any
13 crimes are committed by anybody that is white, it is the
14 Aryan Brotherhood's fault. It is that simple. Finished.
15 You are white, you committed a crime, AB did it. Done.

16 Not until he gets cross-examined, not until
17 then do we find out that after the January 2nd, '97 rec
18 yard fight, when they are in the hole and they are making
19 knives and they are making lists, David Sahakian is not
20 present. He is not there.

21 A fellow named Oeschle, Ray. Ray Oeschle
22 leaves on February 10th of '97, and David Sahakian
23 doesn't get to the hole until February 14th, '97. So the
24 question is this. If he doesn't get there until
25 February 14th, why does he have to do this teaching of

1 classes, and what they said and how to make knives
2 because Fat Boy and Little Man are already made, and
3 one of them is out on the range.

4 Now, let me tell you something. By the time
5 you get to Marion penitentiary, as it was in 1997, you
6 know how to make weapons. You had better know or you had
7 better learn very quickly on your own. You are not going
8 to need somebody to hold a class on how to make weapons.

9 Michael Wagner is a guy who manufactures
10 meth, sometime in '88, goes into the penitentiary, gets
11 out in '05. He has been to various prisons, disciplinary
12 problems, assaults, assault with weapons. He gets to
13 Marion in March of '95.

14 He is the leader of the Dirty White Boys, he
15 along with Van Meter, and he says Williams. Now,
16 Williams never said that, but he said the three of them
17 are leaders. And the first thing he does is he gets in a
18 fight with a guy named Hustler, and he beats him with
19 handcuffs.

20 He becomes fast friends, he says, with John
21 Gotti, who bought commissary for some of these people who
22 were there, and that is because Gotti told him he had no
23 back up. Really? He had no backup?

24 What happened to Glenn West and the people
25 that were backing him up? And are you telling me that

1 his buying from the commissary for these people is the
2 money he is paying for protection? What happened to all
3 of those big dollars that he is paying and all of that
4 stuff. We are now down to potato chips and pretzels and
5 licorice? And whatever they want from the commissary, up
6 to like \$140 to \$160, that is it? That is the money he
7 is paying for protection. John Gotti? For protection?
8 I don't think so.

9 Now, according to Wagner, he says that
10 Mr. Sahakian told him to go out there to kill Wahkil
11 Johnson so they could shake Gotti down. That makes no
12 sense because the same man who he says told him to shake
13 him down had arranged for a contract for protection.

14 Now, you have heard about the fight that he
15 gets into with a fellow named Johnson for hitting Joe
16 Tokash on the head. And it is on a rec yard and it is
17 icey, and they slip and fall and nothing really happens.
18 And he can't get his satisfaction in the fight. He talks
19 to Van Meter, however, and Williams and Ritter, within a
20 week of the January 2nd, '97 rec yard fight, and he does
21 that because that is a Dirty White Boy problem. The
22 Dirty White Boys were on the rec yard that day, and they
23 got snookered, and they got hit, and they got beat. And
24 he talks to them about that.

25 THE COURT: All right.

1 Ladies and gentlemen, we will take a
2 midmorning break for 15 minutes, and, remember, don't
3 discuss the case amongst yourselves or with anyone.
4 Don't make up your minds about any issues in the case and
5 we will be in recess for 15 minutes. Thank you.

6

7 (The following proceedings were held outside the
8 presence of the jury:)

9

10 MR. WOLFE: Your Honor, there is a question I
11 would like to take up. Would your Honor consider asking
12 defense counsel whether Markum Fitzhugh's inmate history
13 quarters which was displayed during argument is in the
14 record? I see no sign that it is.

15 THE COURT: What exhibit number was it?

16 MR. SHOSTAK: Your Honor, I don't have an answer
17 to that question, but I certainly thought that it was in
18 the record.

19 MR. SHOSTAK: Bates-stamped number --

20 MR. WOLFE: What exhibit number?

21 MR. GREEN: You can finish answering before the
22 interruption.

23 MR. SHOSTAK: The Bates stamp -- the number on it
24 is 7679, and I don't -- first of all, I don't see why I
25 couldn't use it anyway.

1 THE COURT: You can't use it unless it is
2 admitted.

3 MR. SHOSTAK: I believe that -- I was under,
4 certainly, under the impression, your Honor, that was an
5 admitted exhibit, and there is no question but that he
6 said he was there on that date.

7 THE COURT: All right. Well, but you can't
8 display something that hasn't been admitted. So let's,
9 without the exhibit number, we can't tell whether it was
10 admitted. The easiest way to find that out would be to
11 look through his -- well --

12 MR. GREEN: We have two indexes, Judge. We have
13 one for the defense, and we have one for the government.
14 During the break, I will look through both of them.

15 THE COURT: Before we bring the jury back in, I
16 will take the bench so we can sort that out.

17 (Recess from 10:34 to 10:54.)

18

19 (The following proceedings were held in the
20 presence of the jury:)

21

22 THE COURT: Let the record reflect the presence of
23 all members of the jury. Counsel and the defendant are
24 present.

25 Do counsel wish to approach the sidebar?

1 (The following proceedings were held at sidebar
2 outside the hearing of the jury:)

3 THE COURT: What about that exhibit?

4 MR. SHOSTAK: It is not in evidence.

5 THE COURT: It is not. All right. Do you have --
6 what is the government's position?

7 MR. WOLFE: As your Honor wishes.

8 THE COURT: Well, I think the appropriate thing is
9 to tell the jury that -- and I would do it now so I don't
10 interrupt the flow of your argument -- that a document
11 was inadvertently shown to them that they won't have with
12 them in the jury room, that it was one of the inmate
13 history, and they won't have it with them in the jury
14 room. And leave it at that.

15 MR. WOLFE: You don't want to name the specific
16 inmate history quarters?

17 THE COURT: That it was for Mr. Fitzhugh. Thank
18 you.

19 (The following proceedings were resumed in the
20 presence of the jury:)

21 THE COURT: All right. Ladies and gentlemen,
22 before we resume argument, there is one small matter I
23 wanted to bring to your attention, and that is that this
24 morning a document was inadvertently shown to you that
25 was not an exhibit that was admitted during the trial.

1 That was the inmate history -- inmate quarter history for
2 Mr. Fitzhugh, and because it wasn't admitted during the
3 trial, it is not in evidence. That is not one of the
4 exhibits that you will have with you in the jury room.
5 You only have the exhibits that were actually admitted
6 during the trial. Thank you.

7 Go ahead.

8 MR. SHOSTAK: Thank you, your Honor. And I
9 apologize to you, to the jury, to the government, and to
10 you, Mr. Sahakian.

11 THE COURT: Thank you.

12 MR. SHOSTAK: Well, I believe I left off, we had
13 talked, and I had want to just go back a minute about
14 Wagner and Gotti. And the fact that Mr. Wagner talked to
15 Mr. Sahakian about Mr. Sahakian's desire for him to kill
16 Wahkil Johnson and that they could shake Gotti down.

17 And my question to you is if that happened,
18 what about the money and the contract that David Sahakian
19 supposedly arranged with John Gotti for his protection?
20 Where is the money? Now, they talked about retaliation,
21 and I told you that Mr. Wagner talked to Van Meter and
22 Williams and Ritter, and that was a Dirty White Boys
23 problem, plain and simple, because they were on the
24 range. They were in the rec yard in E unit January 2nd
25 of '97, and it was the Dirty White Boys that got

1 ambushed.

2 Now, Jessie Van Meter is a druggy. His drug
3 of choice is cocaine, and he was charged in this case.
4 And just as soon as he was charged, he made a deal with
5 the government to extricate himself. Now, he is
6 interesting to me because he is the only witness in this
7 case who ran the gamut. He ran the table. He went all
8 the way from a camp to a federal correctional institution
9 to a United States penitentiary to the ADX in Colorado.
10 And he did it all without any influence, without any
11 input, without any help, without any threats from the
12 defendant David Sahakian.

13 But he gave a lot of excuses. One was I was
14 young. I didn't really think about what I was doing at
15 the time. The second one he gave was I had to do it. If
16 I didn't do it, they would put me in the hat. Lot of
17 them said that. If I didn't do it, I would be in danger.
18 They would put me in the hat. Do you remember Mark
19 Anderson, that young man that testified, had on a suit,
20 defense called. Said he was totally independent, didn't
21 belong to any gang. He was at the same place where we
22 are talking about, and he didn't do anything that anybody
23 told him because he thought for himself and he did what
24 he wanted to do. And Carey Conner did the same thing.
25 He was an older gentleman. He is going to die in jail.

1 He is in his 70's, and he said, I don't belong to any
2 gang. I didn't need any gang. I didn't need any groups.
3 I didn't have to do anything that anybody told me.
4 Neither of them did anything that anyone told them, and
5 neither of them were in a hat, no matter what size hat it
6 was.

7 Van Meter didn't have to beat up Billy
8 Strobel. He didn't have to look at the sign language
9 that Wagner was giving him for him to do that. He didn't
10 have to do that. He beat the living tar out of that kid
11 for no reason at all except Van Meter liked doing it. He
12 was auditioning. He was going to show everybody what a
13 macho man he was. He could take Billy Strobel down, and
14 he did it because he wanted to do it. The other excuse
15 that he uses is it is the AB's fault, the Aryan
16 Brotherhood's fault. They get blamed for everything that
17 the whites do.

18 He follows Ricky William's line to the T. But
19 keep this in mind, that Van Meter was a Dirty White Boy.
20 They had their own organization, and they had their own
21 hit list. And Wane Becker, whose name you heard, Bam Bam
22 was on that list. They were going to kill Bam Bam. They
23 were going to kill their own. And that list was all done
24 and all made without David Sahakian's influence.

25 The last excuse he uses is I didn't do it for

1 myself. It was always the Aryan Brotherhood brotherhood,
2 and he wasn't even a member. After January 2nd, '97 in
3 the rec yard fight, he says, yeah, we were all in the SHU
4 and we were all making knives and doing all this stuff
5 and plotting and David Sahakian was down there with us
6 making weapons and making lists.

7 Now, first of all, you know that that is
8 contrary to what Wagner said. Secondly, and most
9 importantly, you know it is contrary to the evidence
10 because Mr. Sahakian didn't get to the SHU until February
11 14th of '97. After Mr. Gotti was assaulted, Mac tells
12 Van Meter -- and by Mac, I mean McElhiney -- McElhiney
13 tells Van Meter to kill Johnson the first -- kill him the
14 first chance you get because Gotti put a hit on Johnson.
15 And Van Meter says, yeah, I told him that, but I don't
16 remember telling that to Mr. Sahakian because I wasn't
17 really close to him.

18 He then comes out and says to you that
19 Mr. Sahakian was on the commission, and that startled me.
20 Mr. Sahakian was on the commission. If that is true,
21 don't you think that you would have heard about it in the
22 government's opening statement that this man who they
23 have charged with all of the crimes about which Judge
24 Phillips has instructed you, that this man was on the
25 commission, according to them, the highest level in the

1 Aryan Brotherhood? Don't you think you would have heard
2 that from the get go?

3 Instead, you have to wait until Van Meter
4 takes the stand to tell you, oh, Mr. Sahakian was on a
5 commission. Let me tell you, the Dirty White Boys had
6 their own agenda. There is no question about that. He
7 even told you that when Wagner mailed him a birthday card
8 and it wasn't his birthday, it meant to attack the DC
9 Blacks. And he says now that he is back in the
10 community, he is even starting to think normal. This is
11 a man who told you when he attacked an inmate named
12 Hillyer and stabbed him, not bad, had a few holes in him.
13 He is the man who took his own message to ADX, not a
14 message from Mr. Sahakian. He took his own message to
15 ADX and told him that Mr. Sahakian and McElhiney had been
16 hit.

17 Mr. Sahakian never gave that message, but it
18 explains why you learn that Mills calls Slocum in April
19 of 1997 to find out if that really happened. That is
20 what prompts that phone call, and it explains why Al
21 Benton says he was looking for six months to try and
22 figure that out to find out about it and couldn't.

23 This is the act of the Dirty White Boys acting
24 independently of anybody else trying to stir things up
25 and Van Meter is the one who wanted revenge for the

1 January 2nd, 1997 attack. He wanted that war to spread
2 to other institutions not David Sahakian.

3 And I submit to you from what you have heard
4 in this case and the evidence from Jessie Van Meter,
5 there is no way he is ever going to start thinking
6 normal. You have also heard that the Dirty White Boys
7 are a farm team. Now, I don't know where that came from.
8 That is really unique. It must have come from somebody's
9 imagination because they are the farthest thing from a
10 farm team than anything can get.

11 When Doc and Duck testified, they said, no,
12 they are not a farm team. That is a separate group. Al
13 Benton agreed it is a separate group. And Mills writes a
14 letter. Let me show you part of that letter which is in
15 evidence, and it is hard to read so I am going to read it
16 to you.

17 Part of that letter says, third, I want to
18 touch base with TD and Kevin on the following: I have
19 been probing these Dirty White Boys in an attempt to get
20 a fix on them and their objectives. From what I have
21 been able to peek at, I am strongly concerned that if we
22 fail to pay attention to these folks in that we fail to
23 not find a way to quash this group, to bring it totally
24 under our control and dominance, then I feel they are
25 inevitably on a collision course against us.

1 Does that sound to you like some farm team is
2 telling the big team what is going on? The big team is
3 concerned about a collision course. You really think
4 that that is what that means? There appears to be a core
5 within them that dislikes us and is driving them in
6 direct competition with us. You got a farm team that
7 competes with the major team? Never.

8 I feel that we are making a serious mistake in
9 just sitting back and letting them pull all the
10 youngsters throughout the FCI's and the USP's. While
11 they are currently a ragtag outfit, just through numbers
12 and all the youngsters alone, there is a real potential
13 of them developing into a legitimate foe. That is no
14 farm team, and Barry Mills is not worried about a couple
15 of guys as a farm team. He knows who the Dirty White
16 Boys are because the fact of the matter is they testified
17 there is more of them than there were of the Aryan
18 Brotherhood. He knows who those people are, and he has
19 set his sites on those people.

20 Now, the last person that I want to talk to
21 you about is Allan Benton. I was the AB. That is what
22 he told you. I was the AB. He originally told you I am
23 the AB until they corrected him and said, you can't be
24 the AB and be where you are. So he says, well, I was the
25 AB. Drug conspiracy, murder conspiracy, assault. Do you

1 know Mr. Sahakian? Yeah, I talked to him for about
2 two minutes. Either he doesn't know Mr. Sahakian, or if
3 he does know him, frankly Al Benton is too big to be
4 bothered with. It is that simple.

5 On direct examination, he tells you some very
6 interesting things. The first thing he tells you on
7 direct examination before we get to cross, on direct, the
8 government can't be trusted. This is their witness, not
9 ours. The government can't be trusted. Secondly, AB
10 recruiting out of Dirty White Boys is a lie. Thirdly,
11 each man stands on his own. Fourth, Exhibit 1 that you
12 have seen and will see again probably ad nauseum is not
13 Aryan Brotherhood paperwork. Fifth, Dewey Lee didn't get
14 a message to take to Marion. Sixth, some Dirty White
15 Boys told Benton that Sahakian and McElhiney were hit,
16 and he was trying for six months to find out because he
17 doesn't trust the Dirty White Boys. He has got no use
18 for them, and so he was trying to find that out.
19 Seventh, he tells you that the Aryan Brotherhood had no
20 structured leadership. Mills, Mills was there. He
21 was -- Mills was at ADX, and if a fellow wanted to go to
22 see Mills or if they wanted to counsel with him, that is
23 what Mills was there for. That is what a Allan Benton
24 told you. According to the government, Al Benton is
25 one of the three men on the commission, and Allan Benton

1 is a man who would know.

2 Now, Benton has never been in any unit in the
3 penitentiary with David Sahakian nor for that matter has
4 Roach, West or Benton. So Allan Benton has told you
5 things that you have to keep in mind when you go to that
6 jury room because they are extremely important. The
7 government called 20 cooperating witnesses, but 20
8 cooperating witnesses doesn't mean the same as 20 people
9 telling the truth. Cooperating and telling the truth
10 aren't necessarily the same. It means working with the
11 government to achieve a particular result for them which
12 furthers their own interests.

13 And, remember, these people are paid in a
14 number of different ways with immunity, with money, tax
15 free, with time cuts, with transfers to different and
16 better institutions where there is more freedom,
17 forgiveness of crimes and are given a new life, new
18 Social Security numbers, new identification, new
19 everything.

20 And you know what I mean when I talk to you
21 about time cuts. That is the reason that in the
22 documents that you saw and the questions that you heard
23 asked and the answers given, the government never
24 promises anything. They don't write anything as a
25 promise. They don't say anything as a promise. But you

1 know what, that witness knows. And it is subtle. Oh, it
2 is very subtle when that is done. Those inmates have an
3 agenda of their own, and it is to make things better for
4 themselves, and I can understand it, and the agenda is
5 the commodity that they are selling to the government.
6 And the agenda is the commodity that the government is
7 buying. And it is the motivation that they have for
8 saying the things that they have said.

9 Now, the fact of the matter as I told you
10 before, we can't, as a defense, give them anything. I
11 think that when this case started, the government had an
12 ill-conceived notion of who David Sahakian was and what
13 the AB was, and it wants you to adopt that notion. But
14 notions aren't evidence. And you have to be vocal about
15 this. Notions aren't evidence. Argument is not
16 evidence. What they say isn't evidence. Only what came
17 from that witness stand by people under oath, and I am
18 suggesting to you that the government's view of the AB is
19 more myth and dreams than it is reality.

20 Now, David Sahakian has spent most of his life
21 in the federal penal system. I make no excuses for that
22 because there are none to be made. He did what he did.
23 He spent his time in jail. He has broken the law. He
24 has paid the price for it.

25 Here, the government seeks to exact more

1 than the price which he has already paid. All that he
2 wants to do now is go home. He has done his time. He is
3 not necessarily proud of it, but he has done it for the
4 crimes that he submitted committed. He didn't deny that,
5 and I say to you that if Van Meter and McGinley and
6 Hawley and Williams, just those four taking, just those
7 four alone who have admittedly attempted murders by
8 stabbing or otherwise can go home, then so can
9 Mr. Sahakian.

10 But the government says, no, you can't do
11 that. We put you in a place filled with violent people
12 and crimes were committed and you committed them.
13 Really? You know every moment that he was at Marion, and
14 he was there for about 20 years, you know that every
15 moment he was there, he was monitored by CO's and
16 cameras. His mail was monitored. His telephone calls
17 were monitored, and you also know he took the witness
18 stand and he exposed his very being to you. If you grade
19 him on English, he got an F. Sorry, but that is how it
20 is. If you grade him on his English, he got an F. If
21 you grade him on what he was telling you and his
22 sincerity, he got an A.

23 It is extremely rare what you saw here in this
24 courtroom that a witness in this kind of a case would
25 take the stand, but he did, and he was subject to

1 cross-examination, and he was cross-examined, and he was
2 redirected as the rules provide, and he didn't have to do
3 it, and that is why Mr. Green asked him, you understand
4 you don't have to do this. And he said, yes, I
5 understand.

6 Now, they will tell you, well, look at what he
7 has got to gain. Of course, he has got an interest in
8 this case except the government forgot something. So do
9 they. They have got an interest in this case with the
10 other 19 that testified, some of whom we discussed. They
11 have got a big interest in this case. This is not just
12 one set, one party sitting here. There are two, and they
13 each have an interest in the case.

14 And that is what makes the horse race that
15 you have got to decide. You also know that the proof has
16 to be beyond a reasonable doubt. We don't have to prove
17 anything, and it is really hard I think for the
18 government to make its burden of proof when they have got
19 nothing to prove except a lot of argument, innuendo,
20 surmise, speculation and conjecture, and the only thing
21 that they showed you was really, that Mr. Sahakian sent
22 Allan Hawley two kites, two letters, and they couldn't
23 wait to put them on the elmo and show you letters,
24 and the language that he was using.

25 What is he telling Hawley? He is telling

1 Hawley don't send me anything. It comes opened. If you
2 are going to send me anything, send it sealed. I don't
3 want Brand business put on broadway. That was discussed
4 because I know it was. I asked the question to one of
5 those witnesses.

6 You don't want Brand business put on broadway,
7 and he didn't either. And remember who he is talking to.
8 This is not somebody that lived next door to you. This
9 is not somebody in your family. This is no 19-year-old
10 kid that you have because your neighbor or somebody in
11 your family. This is Allan Hawley. He is in the same
12 penitentiary as everybody else that they -- that was
13 there with them at the time. He has also been convicted
14 of violent crimes, and he is telling Hawley he doesn't
15 want his privacy invaded. Nothing wrong with that. So
16 don't send it in an unsealed envelope. And he was harsh
17 about it. I will be the first one to tell you that.
18 That is tough language, but it comes from tough people
19 who live in tough places. That is their culture. That
20 is where they live.

21 Now, we can be mocked, but I can tell you
22 this. Pretty please isn't going to cut it. Pretty
23 please. And the second letter that Mr. Sahakian sends
24 Hawley, his language is less harsh because he wants
25 Hawley to send him some drugs. And that is the one in

1 which he tells Hawley that he threw somebody off of a
2 tier. Again, it was years not mentioning. Told him,
3 hey, you want to end up like Leger, don't send it. But
4 he doesn't do that because he doesn't have any
5 involvement with the Leger killing.

6 And if he threw somebody off of a tier, do you
7 think that you would be sitting there looking at me now
8 never having heard about that from the government in this
9 entire case since August the 12th? You really think that
10 even the ones who admitted that they were liars, even the
11 ones who admitted that they made deals with the
12 government didn't say that. And to keep him,
13 Mr. Sahakian, from going home, you need more than deals
14 from admitted liars and lies. Take a look at the issues
15 that were raised and that the government hasn't proved.

16 Do you remember when you were a child and
17 somebody would come in the house, maybe grandfather or an
18 uncle or somebody smoking a cigar, and they would blow
19 that smoke ring and a ring went out. And you used to
20 grab it, you used to grab it, and you would open your
21 hand and there was nothing there. And they would do it
22 again. And you thought it was funny. You grab it and
23 you knew you had it, and there was nothing there.

24 That is what the situation that we have here.
25 When you look and listen to the allegations and the

1 argument the government presents to you, under the guise
2 of being evidence, and you open your hand, there is
3 nothing there.

4 You will recall that in some cases the
5 government, the Bureau of Prisons puts in effect, for
6 example, like there is no self-defense. Being in a scale
7 with Mr. Sahakian there at Marion, a guy comes you and
8 attacks you, you take out a weapon and get in a fight
9 with him, you were standing there minding your own
10 business. Guy comes up, attacked, sneaks up behind you,
11 comes up in front of you, makes no difference. He
12 attacks. You defend yourself. You both go to the hole.
13 It is that simple. They changed the language to fit
14 themselves.

15 Now, I want to talk to you about Exhibit 1.
16 This is supposed to be, as you were told, the cornerstone
17 of the government's case. It is a mixture of
18 two shrunken forms. Remember that. You have the big
19 form, typewritten, real small, and then the handwritten
20 form underneath. Let me tell you something. People who
21 have lived like Mr. Sahakian can't make that piece of
22 paper. In order for them to get something photocopied,
23 they have to give it to their counselor and say photocopy
24 this for me. Then they would have to say, and when you
25 photocopy it, reduce the size, and so when the counselor

1 takes it, he has got it in his hand. You don't think he
2 is going to read it? Do you think all of these people
3 that run the Bureau of Prisons are stupid? You don't
4 think the guy is going to read that, then take a look at
5 that, oh, thanks, Mr. Sahakian, but I got to go upstairs,
6 I got to see somebody, and take that paper with them.

7 So when they show you Exhibit 1, there are
8 staple holes in that exhibit which indicates that it has
9 been stapled to something. And at some point, he gets a
10 copy of what has been marked as Exhibit 1 earlier on, and
11 it looks like this. Now, that is the same Exhibit 1 that
12 the government has, but it is even smaller, but look at
13 the one that Mr. Sahakian has.

14 MR. WOLFE: Is this an exhibit?

15 MR. SHOSTAK: What do you see here? Two holes.
16 And that is in evidence.

17 Now, that exhibit, shows two holes at the top
18 that he got earlier, far earlier than what Ms. Blackshaw
19 sent him. And he can't punch two holes. He has got no
20 two hole punch. He has got none at all, and, according
21 to the document, the way they are laid out, apparently
22 they say, that is the way the Aryan Brotherhood works.

23 Glenn West says he discussed -- he discussed
24 the contents of that document which was Exhibit 1 and
25 which is the same as what I just showed you and was in

1 evidence with Mills. Well, discussing something with
2 Mills doesn't make it real. They are creating their
3 own -- trying to create their own reality, and it is not
4 working.

5 Now, it certainly doesn't make somebody's
6 thoughts the cornerstone to anything, and he says, Mr.
7 Sahakian does, was planted in my cell, that Exhibit 1. I
8 didn't have it. When my stuff was taken out, I didn't
9 have it. Wasn't there. So you saw a tape. We showed
10 you the tape, one that I could run, and I am totally
11 inept because I got two left hands when it comes to that.
12 And, secondly, we showed it to you later, and it was
13 smoother, and you could see what happened.

14 Now, what happened was at one point you saw a
15 piece of paper dropped on the side. If you run it at
16 three quarter speed, and one quarter speed rather, and
17 you do it almost frame by frame, you can see that happen
18 because that is done by Mr. Ellit. But here is the thing
19 that got me. There are two guys in his cell. Colson and
20 Ellit. And what happens is Colson has got a box in front
21 of him, and he is taping the box or writing down
22 something about the box. And he is looking directly at
23 the box. What then happens is that Ellit turns around.
24 Perhaps, somebody calls him. Hey, Ellit. The thing to
25 do would be to step out of his doorway, look down the

1 hall, you look down the hall this way and say, hey, yeah,
2 what is up. You don't get that. You don't hear anybody
3 yelling, hey, Ellit. You don't hear anything. What you
4 get is this.

5 (Demonstrating.)

6 Why in the world would a CO like Ellitt have
7 to make that kind of motion which is absolutely nothing
8 but a furtive motion. It is a motion to indicate that
9 something wrong is about to go on, and he is looking to
10 see who is around him. Now, they can tell me, boy, that
11 Shostak don't get it. There is a camera there. Well,
12 let me tell you something. There comes a point when they
13 don't care because they are the government because he is
14 a CO. So, okay, big deal, let them catch me. Who they
15 going to believe, some guy that has been in the joint or
16 me with my uniform?

17 But what he -- what nobody can explain is how
18 he looks when he comes out of that doorway, and looks
19 both way way down the halls and you have to figure out
20 why. And if there is a legitimate reason for it, I sure
21 haven't heard it in this courtroom.

22 Now, Julie Blackshaw says she found the
23 paper, Exhibit 1 among Mr. Sahakian's papers. Well, she
24 was supposed to. Ellit put it there.

Neither Blackshaw nor Carmen Renella were

1 asked or said anything about removing a staple or that
2 the exhibit was stapled to anything or that at one point
3 when you see the whole piece of paper, it has got
4 two holes punched at the top.

5 There is another reason that it wasn't in
6 Mr. Sahakian's cell, and I suggest this to you. Assuming
7 that he had those papers, assuming that, they knew two
8 years in advance. Everybody at Marion, everybody knew.
9 There was testimony from it. They knew two years in
10 advance this indictment was coming.

11 Do you really think that all of those people
12 in that institution that might have had anything to do
13 with that piece of paper are going to keep it in their
14 cell? Are going to hide it among their legal papers so
15 that you are told that there is 150 pages apart. I
16 didn't hear that evidence. I don't know where that came
17 from. But I think that the evidence is clear that the
18 document is not Mr. Sahakian's.

19 Now, the AB is thinking about what its
20 structure is, and Mr. Sahakian, told you they have been
21 talking about structure for years. Every once in a
22 while, you always get the same go-around about structure.
23 No witness told you there was any hard fast plan of the
24 Aryan Brotherhood. You had some of the inmate witnesses
25 tell you that there were five councilmen. Sure is

1 interesting that Mr. Sahakian wasn't one of them.

2 It is also interesting that they say that
3 Mr. Sahakian wrote the bottom part of Exhibit 1, and the
4 one person you didn't see was a handwriting expert.
5 Wouldn't that have been simple. They say to you we got
6 his handwriting, here is a handwriting expert. Here is
7 this bottom part of Exhibit 1. Is it or isn't it? What
8 are you going to tell me? Costs too much money? We have
9 been here since August the 12th. Where is that
10 handwriting expert that they want to bring in here, that
11 they ought to bring in here, that they ought to be able
12 to say to you unqualifiedly, David Sahakian wrote that.
13 They are not here. Maybe you want to think why there
14 isn't.

15 Now, you will probably be asked to make
16 comparisons of different handwritings so that somehow you
17 transform yourself from jurors to handwriting experts.
18 Now, if you do, you have got to be unanimous on what you
19 decide, and you have got to decide that the similarity
20 exists, and --

21 MR. WOLFE: Your Honor, I object. That misstates
22 the law.

23 THE COURT: It is a misstatement of the law that
24 the jurors have to transform themselves into handwriting
25 experts. And the instruction that I read to you

1 yesterday, ladies and gentlemen, is what controls on
2 this. And as I said, you will have a copy of that
3 instruction, but what it states is that the jurors, lay
4 jurors are entitled to make a comparison of handwriting
5 and make a decision about who the author of the document
6 is.

7 You may continue.

8 MR. SHOSTAK: You have to decide if the similarity
9 exists between Exhibit 1 and printed and written
10 handwriting documents by others in this case. So let me
11 tell you, you have got to take a look at handwriting
12 documents from Steve Scott, Al Benton, Greg Story, John
13 McGinley, Rodney Dent, Slocum and Hawley. And to do
14 that, you ought to take a look at Exhibits 2, 13, 50,
15 150, 153, 154, 232, 1159, 1160 and the Hawley letters, 61
16 and 62.

17 When you look at these, and I will put on the
18 screen the copy of the Hawley, the letter written,
19 exhibit -- government's exhibit, I think it is 143. I
20 think I said that. I'm sorry. 61 and 62. I'm sorry.

21 When you take a look at this exhibit, you have
22 to compare it to this one, and you are going to find some
23 things between what I showed you and those documents that
24 I read off to you as indicating that it is not the
25 handwriting of David Sahakian. Keep in mind, John

1 McGinley said he wanted to try and duplicate Barry Mills'
2 handwriting. And pay particular attention to the dashes
3 and the periods that Mr. Sahakian uses when he writes
4 when you are back in your jury room, and he uses them on
5 different occasions to separate different thoughts.

6 He is prolific with the use of the dash and
7 dots, but, overall, when you look at each of the
8 documents and you look at the exhibit, they clearly were
9 not written by Mr. Sahakian. You will find an exhibit
10 150 that Slocum's E's are the same as what you heard
11 about. And keep in mind also that they are talking in
12 some cases more about printing than you are about
13 handwriting. And when you look at Hawley's letters, you
14 will notice that the T's don't go across the H's like in
15 the word "the," or "that." The G's are different. The
16 C's are different. The capital B's are different. Could
17 it be that he didn't write it, and that is why there is
18 no handwriting expert?

19 Let me talk about Inman and Burkett. Have you
20 ever walked down the street and you hear a car misfire,
21 scares the heck out of you. Loud noise. Frightens you.
22 Sounds like a shot. When the government tells you in the
23 opening statement that Mr. Sahakian was at Pelican Bay
24 and brought a message to Mills at Marion, it backfired.
25 It misfired, and it was startling. You were told the

1 defendant, then a member of the California Aryan
2 Brotherhood, was also incarcerated at Folsom in the mid
3 '80's, and he later was incarcerated at Pelican Bay as
4 well. He was later released.

5 Well, years later from Pelican Bay
6 re-incarcerated in the United States penitentiary at
7 Marion, Illinois. So they have Mr. Sahakian at Pelican
8 Bay. Mr. Green tells you in the opening statement he was
9 never there at Pelican Bay. Mr. Sahakian never was at
10 Pelican Bay.

11 Now, with all of the resources possessed by
12 the federal government to investigate this case and to
13 know where Mr. Sahakian is at all times, wouldn't you
14 think that they would know and have evidence if he was at
15 Pelican Bay or not?

16 And when he was sitting on the witness stand,
17 the government never asked him by the way, ever been to
18 Pelican Bay? You have never been there, have you? Or
19 you were there, weren't you, during these dates. You
20 never heard any of that, and there is good reason for it
21 because he wasn't there.

22 MR. WOLFE: Objection, your Honor. That states
23 matters outside the record for which there is no
24 evidence.

25 MR. SHOSTAK: I think I -- I could ask that a

1 reasonable inference be drawn.

2 THE COURT: That objection is sustained.

3 MR. SHOSTAK: Okay.

4 Did you notice in the closing argument that it
5 was referred to as the California prison system. That
6 language was used. He came from the California prison
7 system. That is different from its opening statements,
8 and it speaks volumes when you hear that when you
9 understand that, really, about the lack of proof in this
10 case. You can't make that kind of a mistake and just
11 say, oops, it doesn't mean anything. It means plenty.
12 It means your information is faulty. That is what it
13 means.

14 And then it raises the question if that
15 information is faulty, what other information do you have
16 that is faulty. So it means plenty.

17 Greg Storey, we talked about him, Ziggy, big
18 soft guy, likes hooch and heroin. Okay. Bets in a fight
19 with Bubba and everybody hears him yell, and Bubba says
20 when he throws down the gauntlet, bring your stuff to rec
21 tomorrow. And the SHU gets quiet.

22 Now, they say the CO's never heard anybody say
23 anything. Well, then, I guess all of these people that
24 heard everybody yelling, I guess, are all lying, and I
25 don't think that for a minute.

1 Now, ziggy goes to rec with a knife. He goes
2 to rec with this knife. Okay. Ziggy says, Mr. Sahakian
3 said, hide that in your shorts. Okay. Where do you hide
4 that in your shorts when you go out with a knife that is
5 that long, that is over 10 inches long and spiked like
6 that, and you hide it in your shorts and you are going to
7 get patted down, and nobody is going to find the knife
8 because I guess everybody that works at the institution
9 is stupid.

10 They don't know that they go to pat somebody
11 down, they feel a knife, it is strapped to a leg, it is
12 wrapped around a waist, they don't know that? So they
13 are going to let them go out into the rec yard carrying
14 this? I don't think so, but, then again, it is up to you
15 to decide.

16 I don't know. Maybe it is easier if you take
17 it out in pieces and you put it together and you stick it
18 up on top of the basketball thing and you jump up there
19 and get it. How is that? You can infer that. Maybe
20 that is easier and more probable.

21 One thing is clear. David Sahakian didn't
22 tell anybody to kill Bubba. He didn't tell Ziggy to kill
23 Bubba, and it is not until 11 years after Storey is
24 convicted that you hear what he had to tell you and he
25 decides to play let's make a deal.

1 Lewisburg is a place that David Sahakian had
2 nothing to do with. No question about that. It is miles
3 away in Pennsylvania, and he had nothing to do with it.
4 Now, it is the government's theory that Mr. Sahakian
5 wanted an all out war with the DC Blacks. They had
6 spread them all over prison just like they had at Marion.
7 It is also a theory, not evidence, but a theory that
8 Mr. Sahakian didn't have to call such a war on his own
9 because he sent the message with a hit list to Mills and
10 Bingham at ADX through Van Meter and Wagner.

11 Mr. Sahakian told you he didn't send that kind
12 of message. The message he told Wagner was when you get
13 up there, tell them what went on down here exactly as it
14 went on down here, and he didn't give a message to Van
15 Meter.

16 Neither Wagner nor Van Meter delivered a
17 complete message. Van Meter having none but on his own.
18 And Wagner, didn't deliver the full message that
19 Mr. Sahakian gave him. And so a letter goes from
20 Bingham, and you have heard about it, how it goes through
21 in a hit or miss letter, and all of that stuff goes to
22 Slocum and then Slocum sends it to Lewisburg and then it
23 goes to Benton.

24 And everybody's mail, keep in mind, is
25 monitored. Everybody's. So that means in order for

1 Benton to get the letter that Bingham sent, which was not
2 written by him, to get that letter, it has to be missed
3 not once, it has to be missed twice. It has to be missed
4 going out and coming in. And there was evidence that
5 they had blacklights that show that hit and miss stuff.

6 Now, if the message is a call to war, then
7 there is no reason for Benton to call Slocum. What is he
8 calling him for? Go to war. Okay, I am going to war.
9 No. He calls Slocum. The truth is the message is a
10 warning, and that is what they are doing. But Benton on
11 his own goes out, causes Salaam and Joyner to be killed
12 and three people to be injured for an attempted murder.
13 Not until a day later, when he is locked up because of
14 the murders, does he find out, you mean not everybody in
15 the institutions did what I did? And they say no. We
16 don't know what you are talking about.

17 No, there was no other murders at any other
18 institutions yesterday. Nobody got killed, and it was at
19 that point that Al Benton decided he is either going to
20 cooperate or be subject to the severest penalty that the
21 law can impose. David Sahakian had nothing to do with
22 Benton making that decision at all, had nothing to do
23 with Lewisburg. Nelson La Ponte, the SIA there, said
24 Sahakian who? He was in the SHU, in I unit, trying to
25 stop the Dirty White Boys from having a war, and the

1 problem with the DC Blacks was a Dirty White Boys problem
2 that they tried to palm off along with the government on
3 the Aryan Brotherhood.

4 Then the sentence gets cut to about
5 four-and-a-half years. He may have some other time to
6 serve. I don't recall. David Sahakian, you have heard
7 no evidence, has ever stabbed anyone. He hasn't stabbed
8 anyone. He has got no blood on his hands. He wants to
9 go home to his family. He is entitled to do that under
10 the evidence in this case.

11 John Gotti's name still grabs headlines to
12 this day. The dapper don hid from nobody. He didn't
13 hide at Marion. He was a person with an outgoing
14 personality who helped other prisoners for whom he would
15 buy commissary, and he was generous. Again, more theory.
16 Because he was John Gotti, the theory is he had better be
17 protected. And who better to protect him, the theory
18 goes, than the Aryan Brotherhood, and they say, David
19 Sahakian made a contract. Of course, the contract had to
20 be approved by Mills and Bingham, and that is all theory
21 that goes up in the same kind of cigar smoke that you try
22 to catch when those smoke rings are formed.

23 None of the people who testified told you that
24 they knew John Gotti the way David knew him, the way he
25 described him. But John Gotti was a tough man. He was

1 tough in mind, and he was tough in body, and he didn't
2 need anybody's protection.

3 Now, Speedy West says, oh, it was my job to
4 protect him, I am going to protect him. So they walk
5 into the range. They walk in from the rec into the
6 building, and Speedy walks in, and where is John Gotti?
7 He is behind him when he is attacked.

8 If you are going to protect John Gotti, if
9 that is what you are being paid all of this money for,
10 that the government says, then you walk in with John
11 Gotti in front of you because you have to cover his back.
12 And when you see him get in, then you go in. Then he is
13 covered at least by you.

14 That is the protection that you are supposed
15 to give John Gotti according to the government. And a
16 man who needs protection doesn't run into the middle of a
17 stabbing brawl for somebody he doesn't know except that
18 it was apparent when he did it, he didn't like what was
19 going on. And David Neville told you he never got a
20 chance to thank him.

21 David Sahakian didn't start any race war. If
22 there was a race war, he didn't exhand it. In the first
23 place, it serves no purpose in starting a race war
24 because when you start a race war, you stand a good
25 chance of getting killed especially in this kind of a

1 race war when the numbers are so disproportionate.

2 A tremendous amount of people on the DC Blacks
3 side, a limited amount on the Aryan Brotherhood side.
4 Secondly, it disturbs everybody's harmony where they live
5 and they don't like that, and people told you that from
6 the stand.

7 Now, he wasn't in the rec yard on January 2nd,
8 the Dirty White Boys were, and that was their problem.
9 Joseph Yonkman and Nelson La Ponte, the two SIA's from
10 Marion and Lewisburg, they investigated what went on
11 while they were there. And they don't know, really, who
12 he is, and Yonkman doesn't really include him in his
13 report. I don't even think he is listed in his report.

14 So, in so far as any race war is concerned,
15 those men, Yonkman and La Ponte who are privy to all of
16 the intells and all of the secret reports between the
17 institutions, they didn't make any reports like that, and
18 they just didn't make the report that they made and then
19 said, well, I think I am going to retire.

20 Racketeering is a scary word because it
21 conjures up all kinds of sinister things when somebody
22 says to you racketeering. The government said that in
23 Leavenworth in 1995 or thereabouts, Mr. Sahakian was in
24 charge of drug distribution.

25 There is no credible evidence of that, none at

1 all. And for you to find against anybody, you have to
2 find it based upon credible evidence. The fact of the
3 matter is that Nyquist was in charge of selling drugs at
4 Leavenworth and then came McElhiney and Hawley. He is
5 trying to get to Lompoc, Mr. Sahakian is, because his
6 mother was very ill.

7 When he finds out that he is not going to
8 Lompoc, and he has been transferred from Marion which is
9 lockdown to Leavenworth where there is no lockdown, he
10 says, okay, fine, then I am here, and I will just take it
11 easy and he does.

12 He doesn't get involved in any of the programs
13 that McElhiney wanted to get him in. He doesn't wasn't
14 any programs. He has got enough programs. He has been
15 to Marion, and he uses heroin when he is there. Nobody
16 disputes it. But the fact of the matter is that he had
17 no intent to do any drug trafficking, no intent
18 whatsoever, and he didn't.

19 Furthermore, even though he is a user, he is
20 not charged for that. And he didn't smuggle any drugs in
21 or have any drugs smuggled in. And he didn't direct
22 anybody as to how much they were to charge for the drugs
23 or what drugs were to be sold.

24 As to the Leger killing, there is no nexus
25 between it and the drugs selling at Leavenworth. Not

1 one person was ever asked by the government what Leger
2 ratted on. We don't know. And we don't have to ask
3 because we got no burden of proof, and that can't be
4 shifted to us.

5 The killing of Leger was a personal matter
6 between Storey and Leger. If it wasn't and if this was
7 in fact an AB hit and, as you heard yesterday, all of
8 these guys, AB guys and associates as they use that word
9 were in the rec yard, and that is an AB hit, then not
10 just Storey is going to be involved in killing Leger.
11 They all would have had to be in it. If that was an AB
12 hit as the government wants you to believe.

13 If David Sahakian had ordered Leger killed, it
14 was a perfect time for him to intimidate Hawley by saying
15 he could wind up like Leger. And once more, there is no
16 credible evidence, credible evidence, not what they tell
17 you, credible evidence that did he anything. As to
18 gambling, he explained to you what happened to the
19 gambling. Gambling was a matter of prisoner management.
20 The institution said you want to gamble, gamble, but we
21 want no problems. McElhiney said let us gamble, there
22 won't be any problems. They let them gamble, there
23 weren't any problems. Now, if that is his fault, then I
24 submit to you that the Leavenworth administration and
25 Bureau of Prisons acted with them because they allowed

1 it. Nobody asked him, can we have gambling. You didn't
2 hear any evidence of that. What you heard was McElhiney
3 is running the gambling, and the institution says, yeah,
4 and they use it to manage their prisoners. It is just
5 another example of the culture in which these men live
6 and not a conspiracy. I submit to you there is no
7 credible evidence of any racketeering against
8 Mr. Sahakian.

9 When this case started and Joe Green and I got
10 into this case, we went through it a little bit, and I
11 asked him this question. I said, I got to ask you a
12 question because we know how this is going to go. We got
13 kind of an idea.

14 MR. WOLFE: Your Honor, I object to any testimony
15 or reference to matters outside the evidence by counsel
16 in arguing.

17 THE COURT: I haven't heard anything yet, but you
18 may continue.

19 MR. SHOSTAK: The question I asked is what makes
20 their crooks better than our crooks? That is the
21 question I had to ask because that is the question that
22 has to be asked. How come their crooks are better than
23 ours. What makes them better?

24 Our crooks didn't get paid anything. They
25 didn't get a new Social Security number. They didn't get

1 their criminal history slate wiped clean. They didn't
2 get housing. Didn't get a car. Nobody dances the wit
3 sec hustle. They got nothing to gain. They got somebody
4 maybe to lose, but they got nothing to gain when they
5 took that witness stand.

6 So I had to ask that question, and there is no
7 comparison when you talk about people like Brandon
8 Kitchen and Doc Holiday, and Duck McDaugherty, and David
9 Neville and Mark Anderson and Steve Richardson, the guy
10 who was stabbed over some 57 times, Keith Robinson, Daryn
11 Harris, just to name a few.

12 I am not telling you these are wonderful
13 people. I am not standing here. I am not stupid. These
14 are tough people. They are in a tough penitentiaries,
15 but they are human beings in spite of what they have
16 done. I think -- I have to tell you, I think that there
17 is kind of an air of dignity about them, that they carry
18 themselves differently in spite of what they have done
19 and in spite of where they have been housed and how they
20 have had to live and the culture from which they come. I
21 think that there is a big difference, and maybe that is
22 the difference between an inmate and a convict which you
23 have heard about.

24 No question David Sahakian is a friend of
25 Doc Holiday's and Duck McDaugherty. He is a friend of a

1 number of other convicts. If they had no respect for
2 him, they wouldn't be his friend, would they?

3 If he caused upheaval and turmoil and
4 disturbed their neighborhood, they wouldn't be friendly
5 with him, and they are certainly not going to be his
6 friend if he starts a race war. Now, unlike the
7 prosecution's crooks, ours are in the same
8 what-you-see-is-what-you-get, jump suit and all. And
9 they come in and tell you what they tell you. They have
10 got no dog in this fight. They are here under court
11 order. Some of them know Mr. Sahakian. Some of them
12 don't. Some of them served time with him. All they had
13 to do was to tell you the truth, and that is what they
14 did.

15 I don't think that because David Sahakian has
16 gained the respect that they have for him, maybe by
17 virtue of his age, I mean 53 is not an old man, I can
18 tell you that. By virtue of his age and the time he
19 served, he shouldn't be punished because the
20 administration used him to try and stop hostilities
21 between the Dirty White Boys and the DC Blacks. Because
22 until that time, David Sahakian wasn't on anybody's radar
23 screen. He wasn't in Yonkman's reports. He wasn't in La
24 Ponte's reports. He wasn't in anybody's reports.

25 You have heard time and time again how violent

1 the DC Blacks can be. So let me put it in perspective to
2 you. They brought the Bloods and the Crips together in
3 the federal system. That is how violent they can be. If
4 you can put the Bloods and the Crips together in a
5 federal system, then you are indeed a violent
6 organization.

7 Very shortly, there is going to come a very
8 special moment in time in this jury trial, and that is
9 when Judge Phillips releases you to discuss the case in
10 your jury room. It will be the first time you can do
11 that. You will discuss the evidence and see that it was
12 totally lacking in substance against David Sahakian. You
13 will discuss the inmates that the government brought in
14 and how they were paid, and what they were trying to gain
15 for themselves. You will talk about independent men who
16 made independent choices, and the fact that the
17 government could have come back with contrary evidence to
18 many things, and it didn't.

19 There has to be proof, not words. Words just
20 don't cut it. So let me ask you some questions that you
21 might think about. If David Sahakian was involved in the
22 Leger homicide, why does Rusty Hale ask him in the rec
23 SHU what happened. If David Sahakian is involved in the
24 Leger homicide, why not threaten Hawley with that? Tell
25 him, hey, what happened to you happened to Hawley.

1 Instead, we are inventing a story about somebody going
2 off a tier.

3 Where is the evidence that David Sahakian had
4 anything to do with Lewisburg? Where is the evidence
5 that David Sahakian was involved in any conspiracy? He
6 has got no blood on his hands. He didn't stab anybody.
7 He didn't kill anybody. Not in any conspiracy.

8 Why does David Sahakian have to be punished
9 for helping Captain Metters cool down the Dirty White
10 Boys at Marion? The clock that he gets from that comes
11 from Metters. That is clear. Hey, guys, you are either
12 going to do what Metters says or we are going to be
13 locked down forever and a day. Your call. They called
14 him in to do that. What is Jessie Van Meter's motive for
15 telling Barry Mills, David Sahakian and McElhiney are in
16 the DC Black's hat. Nobody asked them to tell them
17 anything.

18 In an intensely monitored prison system, where
19 the telephone calls and the mail are monitored, no
20 implication of him in any conspiracies. We got them for
21 Slocum, Benton and Mills but not for defendant. Where is
22 the money? Where is all this money that you hear about,
23 you have been hearing about this in this case? Show me
24 the money. Where is it.

25 And if he is so deeply involved, how come

1 two top SIA or SIS officials, Yonkman at Marion and La
2 Ponte at Lewisburg don't really know who he is? If he is
3 in such a high place, positioned as an AB leader, why
4 isn't he listed in this '97 threat assessment of the AB
5 as a member?

6 He is not in Yonkman's report, Marion. He is
7 he is not in La Ponte's Lewisburg report, and he is not
8 even in Miller's Leavenworth report. If there is a
9 contract to kill Johnson for Gotti, then how do you have
10 a contract where the price fluctuates between a million
11 dollars and we will squeeze him to get money out of him?

12 When did the war begin? When did this war
13 end? Those are questions that you have got to think
14 about the answer, I think. I know you have a heavy duty
15 in this case. You have got some heavy lifting to do.
16 There is no question about that in my mind. Judging
17 another person's actions is never easy especially when
18 you have to judge him fairly between an individual and a
19 government.

20 And I suggest to you that you do your job just
21 as well by finding David Sahakian not guilty as you do
22 otherwise. He wants to go home to his father. He has
23 paid the full price for everything that he has done, and
24 I ask you to let him do that.

25 Thank you.

1 THE COURT: Thank you. I think we are going to
2 take a lunch break before rebuttal argument.

3 Ladies and gentlemen, we will take a lunch
4 break until 1:30 this afternoon. Keep in mind, you still
5 haven't heard everything so don't make up your minds yet,
6 and don't discuss the case. This is probably the last
7 time I will tell you that. Probably. I can't promise
8 it, but it is just as important as the first time I told
9 you.

10 Do not discuss the case, anything related to
11 the case, that means any of the evidence, the testimony,
12 the argument that you have heard thus far, anything
13 related to the case, the participants, anything. Don't
14 do any investigation about the case, and enjoy your lunch
15 hour. Thank you.

16

17 (The following proceedings were held outside the
18 presence of the jury:)

19

20 THE COURT: We are on the record outside the
21 presence of our members of the jury. Mr. Akrotirianakis,
22 I did not see another verdict form.

23 RIGHT2: Yes, your Honor.

24 MR. WOLFE: We changed our minds, your Honor. We
25 do not intend submitting another one.

1 THE COURT: All right. Is there any objection to
2 the, then, it is the third proposed verdict form?

3 MR. GREEN: No objection.

4 THE COURT: All right. Then we will make copies
5 of that. All right. Thank you.

6 (Recess from 12:19 to 1:30.)

7 THE COURT: Let the record reflect the presence of
8 all members of the jury, all counsel and the defendant
9 present.

10 Mr. Wolfe, you may argue.

11 MR. WOLFE: Thank you, your Honor.

12 Ladies and gentlemen, we are really close to
13 this being over, and another thing we are really close to
14 is the disappearance of the presumption of innocence.

15 David Sahakian, as he sits here now, is
16 presumed innocent, and all the while I talk to you, he is
17 presumed innocent, but when this yapping is over and you
18 folks deliberate and decide about the evidence, then, the
19 presumption goes.

20 And he has to stand or fall on the evidence.
21 What I am telling you now is not evidence. It is
22 argument. It is just lawyers flapping their gums. It
23 either helps you folks or it doesn't, but it is not
24 evidence, and it is not evidence when defense counsel
25 says it either.

1 Let's talk -- this is not probably going to be
2 especially orderly because it is just responsive, but
3 there are a few things I would like to talk about.

4 The defendant argues to you Dewey Lee who is a
5 bad guy because he is a bank robber and he does assaults,
6 maybe I will just start at that. Defendant points out to
7 you that all the government witnesses have horrifying
8 criminal histories, but that is neither here nor there.
9 Whether you are telling the truth is not settled by
10 whether you have a criminal history.

11 You have to consider it. The instruction
12 requires you to do it, and one would be mad not to
13 consider it, but it doesn't settle anything because all
14 the defense witnesses whom the defense can't give
15 anything and therefore presumably are to be believed
16 whenever they say anything, they are all people with
17 monstrous criminal histories too.

18 And either the defense witnesses were telling
19 you the truth or the government witnesses were telling
20 you the truth. Either way, some people with felonies
21 lied to you and some people with felonies told you the
22 truth, and you all have to decide, saying they are nasty,
23 they kill people, they rob banks, they do assaults, they
24 do drug trafficking, it is all true, but it doesn't
25 settle the question.

1 Dewey Lee, he is a bank robber and does
2 assaults, and he took a message to Mac at Marion from
3 Lewisburg, not to David. That is the argument. Now,
4 bear in mind, it is just argument, and it refers to
5 evidence and to testimony. Your recollection controls,
6 not mine. But I am going to tell you what I recall.

7 What I recall Dewey Lee testifying about is
8 approximately this. He wanted you to give that
9 description to the defendant upon your return to Marion?
10 Yes, sir. Either him or Michael McElhiney. Were you to
11 deliver that message directly to either the defendant or
12 either McElhiney? Yes, sir. He said to deliver it only
13 to Big Mac or Dave. That is what I think he said.

14 I like this one too. There was a reference
15 to the message that went to Al Benton, war with DC from
16 TD, and there are two really cool things about this.
17 Defendant's argument to you is everybody's mail is
18 monitored. For Al to get the letter that Bingham sent to
19 him, it had to be missed twice. It had to be missed
20 going out of ADX. It had to be missed coming in at
21 Lewisburg. And the evidence is that they had
22 blacklights. That is just an assertion by counsel about
23 what the evidence is.

24 My recollection is that the evidence is
25 Ms. Adams who did the monitoring at ADX for all these

1 inmates -- my recollection is that the testimony of
2 Ms. Adams was. Question by Mr. Shostak:

3 "There is, at least according to
4 the discovery, a letter sent from the
5 ADX to a fellow outside named Ron
6 Slocum; correct?

7 "Answer: Yes, I heard that.

8 "Question: Okay. Slocum then
9 sends a letter to Lewisburg; correct?

10 "Answer: That is what we
11 learned. Yes.

12 "Question: Sends it to a fellow
13 named Al Benton; right?

14 "Answer: Yes, I believe.

15 "Question: And the letter is
16 what has been told to us to be a hit
17 or miss letter; correct?

18 "Answer. Yes."

19 Got to slow down.

20 "And we know that a hit or miss
21 letter is one in which some form of
22 acid is used to write a message on an
23 already written letter so it is not
24 visibly determined to show itself?

25 "Answer: Yes. That is it.

1 "Question: Okay. Now, in so
2 far as your monitoring the mail is
3 concerned, you knew about hit or miss
4 letters for sometime before the
5 letter went out in, let's say, August
6 of 1998; correct? That is 1997.

7 "No, I didn't know.

8 "You didn't know about that?

9 "No.

10 "When did you learn -- let me
11 ask you this. When did you first
12 learn that there was a blacklight
13 that could determine an ultraviolet
14 light that could determine whether or
15 not a paper contained a hidden
16 message on it, if you did?

17 "I learned about the hit and
18 miss process after the inmates
19 debriefed. So it would have been
20 after that time.

21 "By Mr. Shostak: So it wouldn't
22 have been before; is that correct?

23 "Correct. Not before the
24 Lewisburg murders.

25 "So you were monitoring the mail

from these selected 50 people without
the benefit of a black light to
determine whether or not any of the
correspondence going out is a hit or
miss letter?

8 "And you were not black lighting
9 the mail coming in -- right -- to
10 these 50 individuals or so?

11 "Correct.

12 "It is not until after the
13 incident at Lewisburg that you learn
14 about the existence and use of a
15 blacklight to determine whether or
16 not a letter is a hit or miss letter;
17 right?

18 "Right."

19 Now, my recollection is just flapping my gums.
20 You folks heard the evidence, and your recollection
21 controls, but that is my recollection.

22 Another point, this is different. This one is
23 just lawlerly, but being a lawyer, I can't resist.
24 Defendant says to you Glenn West discussed Exhibit 1 with
25 Barry Mills, but discussing it doesn't make it real.

1 They were creating their own reality, and thinking it
2 doesn't make it so.

3 Well, that is, I submit to you, not entirely
4 true. One of the counts of this indictment with which
5 the defendant is charged is count 2. It is a
6 racketeering conspiracy, and you will find in the court's
7 instructions to you instruction number 40 which is about
8 the elements of a racketeering conspiracy, and I won't
9 read it all to you. It is 40, and you folks have the
10 entire text. I will just read you the part that I find
11 interesting.

12 First, as I previously instructed you, to
13 convict the defendant on a Rico substantive offense as
14 charged in count 1, the government must prove that the
15 defendant personally committed caused or aided and
16 abetted at least two of the charged racketeering acts.
17 By contrast, to convict the defendant on the Rico
18 conspiracy offense charged in count 2, the government is
19 not required to prove that the defendant or any
20 conspirator actually committed, caused or aided and
21 abetted any racketeering act. Moreover, it is not
22 necessary in order to convict the defendant of a charge
23 of conspiracy that the objectives or purposes of a
24 conspiracy whatever they may be have been achieved or
25 accomplished. The ultimate success or failure of the

1 conspiracy is irrelevant. Rather, the conspiratorial
2 agreement to commit a Rico offense is the essential
3 aspect of a Rico conspiracy offense.

4 If the thought you have is that I will get
5 together with my AB brethren and we will kill people, you
6 are guilty of conspiracy without regard to whether you
7 are able to kill anybody. If you say we will get
8 together and kill Walter Johnson or John Gotti, that is a
9 conspiracy and an agreement without regard to whether the
10 BOP manages to keep him separate from you and keep you
11 from killing him. The thought is the crime. That is
12 count 2.

13 Defendant says to you in argument, the DWB's
14 wanted to go to war after January 22nd, 1997. It is
15 true. Jessie Van Meter said I wanted revenge, and I
16 wanted it bad. The question is whether that is all that
17 was going on. Defendant says the DWB's are a separate
18 and distinct organization from the AB, totally separate
19 and distinct. Defendant liked that point so much he made
20 it again later. The DWB's are a farm team for the AB.

21 Defendant says, I don't know where that came
22 from. Well, I know where it came from, and so do you.
23 Joe Yonkman, the first defense witness said the DWB's at
24 Marion in 1997 were pawns. That is his word, pawns of
25 the AB.

1 Daneen Adams said that they were a farm team
2 and a recruiting ground. Barry Mills in Exhibit 74,
3 Exhibit 74 is what it is. Barry Mills says, I am worried
4 about these guys. They are currently a ragtag outfit,
5 but they could develop into a legitimate foe. The DWB's
6 they will the daylights out of people. They are not a
7 joke. That is not the government's theory. The question
8 is were they directed by David Sahakian and Mac McElhiney
9 in March, January, February and March of 1997?

10 We have talked about all the evidence. Joe
11 Yonkman who did the report that doesn't mention David
12 Sahakian, defendant says twice, the Yonkman report does
13 not mention David Sahakian. My recollection is that
14 during cross-examination by Mr. Green, the point was made
15 that it only mentions David Sahakian twice. But the
16 point is Joe Yonkman didn't say David Sahakian was
17 running things. The date of the report is in February,
18 March, I am not sure, but he was asked whether his report
19 included events that took place afterward. Another
20 lawyerly question.

21 The issue is not whether David Sahakian could
22 be proved to be responsible for any of these crimes in
23 March of 1997. It is whether he was proved beyond a
24 reasonable doubt to be responsible for them today. He
25 can pull the wool over Joe Yonkman's eyes in 1997. The

1 is can he pull it over your eyes today? That is all you
2 have to decide.

3 I am sort of repeating myself, but Yonkman was
4 asked, you don't have anything on David Sahakian? He
5 said, no, I didn't. When I did the report, I didn't.
6 And Joseph La Ponte, they say, La Ponte didn't even know
7 who David Sahakian was. Well, that is so. I think he
8 did say something like that. The question is what does
9 it mean today to this case? My recollection is that when
10 Nelson La Ponte was asked about David Sahakian and said
11 he didn't come up in the report that La Ponte wrote about
12 the Lewisburg murders, La Ponte.

13 "Question: You said that David
14 Sahakian never came up in any of your
15 investigations. Do you remember
16 that?

17 "Yes.

18 "Did you do any investigation at
19 the ADX of the August 28 murders?

20 "Answer: No.

21 "Question: Did you do any
22 investigation at Marion?

23 "Answer: Not my jurisdiction.

24 "Question: Did you interview
25 any inmates at the ADX?

1 "Answer: No, not my
2 jurisdiction.

3 "Did you interview any inmates
4 at Marion?

5 "No, sir.

6 "Did you investigate Ronald
7 Slocum?

8 "Investigate him in what sense?

9 "Did you conduct any
10 investigation to determine whether or
11 not Ronald Slocum was involved in any
12 way in the murders on August 28 at
13 Lewisburg?

14 "Answer: We looked at
15 Mr. Slocum only when his name came up
16 when Al Benton brought his name up.

17 "Did you do any investigation to
18 determine whether or not there were
19 any other members of the Aryan
20 Brotherhood's national leadership
21 were involved in the decision to
22 carry out the killings at Lewisburg
23 on August 28?

24 "No, sir.

25 "Did you do any investigation to

1 determine whether any other members
2 of the Aryan Brotherhood at other
3 institutions asked that the war be
4 spread nationwide?

5 "I am not sure I follow your
6 question.

7 "Did you try to determine
8 whether any other institutions' AB
9 members asked that the war be spread
10 to Lewisburg?

11 "No."

12 The question is not what Nelson La Ponte was
13 interested in in 1998. The question is what did the
14 defendant do, and is the proof that you folks heard over
15 the last two months proof beyond a reasonable doubt?

16 There were several assertions by defendant in
17 his summation about things that were or were not in the
18 government's opening statement. The opening statement is
19 just like this, just like what I am doing now. It is
20 just lawyers flapping their gums, and it is not evidence.
21 And it is neither here nor there if I get it right.

22 If I make a mistake, shame on me. But the
23 question for you folks before the United States of
24 America versus David Michael Sahakian is what is the
25 evidence? And does it prove the defendant's guilt of

1 anything at all beyond a reasonable doubt? Defendant
2 Sahakian was made a commissioner according to the
3 testimony of Jessie Van Meter. I think Dewey Lee said
4 it, but in any event, the testimony was, according to my
5 recollection, that he became a commissioner in the fall
6 of 1999 in building 63 at Leavenworth while he and other
7 AB members were waiting to lie for Mac McElhiney at
8 trial.

9 In 1999, that is years after all these charged
10 events, he wasn't a commissioner when he committed these
11 crimes. He became a commissioner afterward because Al
12 Benton, sickened as he ought to have been by what did he
13 for the AB at Lewisburg, dropped. And Kevin Roach
14 dropped. And Dave Sahakian stepped up on to the
15 commission in 1999 but not before the crimes, not when
16 these crimes took place.

17 And another point here, the devil is in the
18 details. It is possible to say something in argument
19 that is completely true and yet is misleading, I submit
20 to you, and that is an instance. Another instance also
21 about timing is, well, don't you think that if Al Benton,
22 a commissioner of the AB was at Marion in 1995 and 1996,
23 that he would be running things and David Sahakian would
24 not be the shot caller?

25 Well, that sounds reasonable, but Al Benton

1 left. Maybe Al Benton ran things at Marion in 1995. The
2 defendant was busy at Leavenworth killing Bubba Leger and
3 running the dope business. No one cares what Al Benton
4 was doing at Marion in 1995. No one cares what Al Benton
5 was doing at Marion in 1996.

6 Dave Sahakian was back there by then, and no
7 one even cares what he was doing at Marion in 1996
8 because there are no charged events. Nothing relevant
9 happens when they are both at Marion together, but on
10 July 18th, 1996, somebody whacked John Gotti over the
11 head with a radio, and we all start to get interested,
12 and when that happened, Al Benton was in Lewisburg. And
13 Dave Sahakian, by then a 16-year member of the Aryan
14 Brotherhood, was running things at Marion.

15 And from John Gotti getting whacked over the
16 head until Wayne Alton being stabbed 70 times and having
17 his eye cut out on August 27th, 1997, I submit to you,
18 because he punched the defendant in the face during a
19 basketball game, the only AB leader at Marion was Dave
20 Sahakian. It doesn't make any difference where the
21 commissioners were. They weren't at Marion.

22 Timing is everything. Dave Sahakian may not
23 have been running things when Al Benton was there, but no
24 one cares what happened then. Several times, the
25 defendant says in summation, the government could have

1 done this, but didn't. The government could have had a
2 handwriting expert, but didn't. There were some others.
3 I don't recall specifically. Excuse me. That is never
4 the question. The question always is is there proof
5 beyond a reasonable doubt? If the government didn't do
6 it, and there is still proof beyond a reasonable doubt,
7 it is neither here nor there.

8 If we did it, if we did it twice, and there is
9 still no proof beyond a reasonable doubt, then the
10 defendant walks. The question always is is the quantum
11 of proof that you folks were shown proof beyond a
12 reasonable doubt? Yes, you have a duty to find him
13 guilty; no, you have a duty to find him not guilty.

14 Defendant says to you our crooks aren't paid
15 anything and they have nothing to gain. Well, no. It is
16 argument, and defendant is allowed to make the argument.
17 They might have something to gain. Maybe the AB won't
18 kill them for it later, and they go on to say our
19 witnesses have no dog in this fight.

20 Do you remember Michael Hunt? Michael Hunt is
21 the guy who made the knife for Greg Storey to butcher
22 Bubba Leger with, and then he made the sissy shank for
23 Mike Eyselle to throw on the ground so they could pretend
24 that Bubba had a weapon.

25 Mike Hunt is the guy who said I am not in

1 the AB, and I didn't make any knives, and this is the
2 birthday card -- these guys do love a birthday -- that I
3 showed you yesterday in summation that is signed from
4 Mike Hunt by Jason Schywhart, Johnny Campbell, Al Benton,
5 Wayne Bridgewater and Henry Michael Houston, Tweak who,
6 maybe they just liked Michael Hunt because he was a nice
7 guy, and maybe Michael Hunt was AB and lied to you about
8 it. Maybe he did have a dog in this fight. I submit to
9 you it is only argument. I am just flapping my gums. I
10 submit to you he had a dog in the fight, and it is Dave's
11 doing.

12 Let's see. Defendant says the government says
13 that defendant was in charge at Leavenworth in 1995,
14 there is no credible evidence of that. At Leavenworth,
15 Nyquist was in charge, then Mac and Hawley. You may
16 remember, I mentioned to you the court's instruction that
17 the defendant is guilty if he joined a preexisting drug
18 conspiracy at Leavenworth. The defendant admits to you
19 that Nyquist was doing dope at Leavenworth and then Mac
20 and then Hawley. And I submit to you that there is lots
21 of credible evidence that Dave joined the preexisting
22 conspiracy and he is guilty.

23 Another one of these things the government
24 didn't prove this, defendant says we don't know what
25 Bubba Leger ratted on. No. I submit to you we don't

1 know whether he did. Dave Sahakian in the AB killed him
2 for it, but you are just as dead if you -- if they think
3 you are a rat.

4 Now, Jimmy Inman, he said that he made a
5 mistake telling somebody don't worry, they stabbed me, it
6 was white on white, it is not racial and that people
7 thought he was ratting out Whitey. Well, I don't know if
8 that is what happened. And I submit it doesn't make any
9 difference. If Dave Sahakian thinks that you are a rat,
10 you are dead. That is what the AB is. They don't have
11 to prove it beyond a reasonable doubt or by any standard
12 at all. No one knows whether Bubba Leger or what he
13 ratted on. No one knows if he did. Once Dave decided
14 that he had and Mac agreed with him, he was gone.

15 Twice defendant says I have no blood on my
16 hands. He ordered it done. He is just as guilty as Greg
17 Storey if he orders it done. That is what those jury
18 instructions are about.

19 Defendant says I didn't give a message to
20 Jessie Van Meter. That is in argument. My recollection
21 is that when David Sahakian testified, he was asked on
22 direct by his counsel, did you give Jessie Van Meter
23 messages to take to the ADX? My recollection is he said
24 Jessie Van Meter wasn't even in H unit then, and that is
25 all he said.

1 Well, the testimony, I submit, again, my
2 recollection is that Jessie Van Meter said I ran into
3 Dave Sahakian at the Oklahoma transfer center where I was
4 on my way from Marion to the ADX having stopped off in
5 Memphis on a writ. And Dave, in 1997, was on his way to
6 or from Leavenworth where he had gone to testify for Greg
7 Storey in Storey's trial for killing Bubba Leger, and
8 Jessie Van Meter said he gave me the message then.
9 Saying Jessie Van Meter wasn't even in H Unit then is a
10 nondenial denial.

11 Jessie Van Meter said he gave me the message
12 through this biker guy that was an orderly at the
13 Oklahoma transfer center, and he sent me the handle from
14 a fire extinguisher, said take this piece of metal,
15 kiester it and take it to the ADX. It will be the
16 Excalibur of shanks. And Jessie said, man, I am not
17 putting that thing in me, that is too big, and he says
18 that was the first time I have betrayed the AB.

19 So Dave Sahakian never denied passing the
20 message. I mean, he says he is not guilty, and that is a
21 denial of everything. What he said was Jessie wasn't
22 even in H unit.

23 About the handwriting, whether David Sahakian
24 wrote the handwritten Exhibit 1, defendant says you got
25 to compare the handwriting for Scott and Benton and

1 Storey and McGinley and Rodney Dent, Ron Slocum, Allan
2 Hawley. Well, my argument to you is, no, you don't have
3 to. I mean, you can if you want. You can compare
4 anything to anything among the stuff that is in evidence.
5 The question is is Dave Sahakian guilty. One of the
6 reasons he says he is not is because somebody set him up
7 and framed him with these documents.

8 I explained to you folks yesterday why I
9 just don't think that could possibly be so. Assuming
10 Ellit has something in for the defendant, and assuming
11 that he doesn't care anything for truth or justice, it is
12 fascinating to me just as an aside -- I hope I don't lose
13 my way in the digressions, but defendant says there are
14 only two kinds of evidence in this case that the
15 government gives you, the lying rats and government
16 employees, and who doesn't like to please their employer.

17 Well, the employees of the Bureau of Prisons
18 are employees of the United States Department of Justice
19 as some of them said to you, and if you folks find -- if
20 you as jurors believe that all the corrections officers
21 lied to you because they wanted to please the government,
22 then it may turn out that you believe the defendant is
23 not guilty. But I submit to you, you got to have
24 something more than name calling to get you there.

25 If Ellit didn't care for trust and justice,

1 just wanted to get the defendant, it just doesn't make
2 any sense. How can he find out what is wanted to make
3 the defendant guilty? How could he cook up the documents
4 that he is going to put in the box? How can he do that
5 when he is briefed according to the testimony of all the
6 searchers, he is briefed that day, he is assigned a cell
7 that day, and he has got to go and search it that day.
8 And he does it in front of a camera and in front of a
9 camera operator, David Knox. Defense counsel, well,
10 defendant, defendant said they are all corrections
11 officers, and after a while they don't care because it is
12 their word against the defendant.

13 Well, he is doing it in front of the camera.
14 Can you really believe that all those things happened in
15 the 20 minutes between the briefing and going to do the
16 search and that counsel or Ellit didn't care. And so
17 that he would lie cheat and steal.

18 Something else interesting, what was that.
19 Oh. Defendant said in summation, they say that the
20 documents were 150 pages apart. I don't know where that
21 came from. Well, I know where that came from, and I will
22 show you all where it came from. I did yesterday, I
23 thought, in opening closing.

24 These pages were marked by Julie Fox
25 Blackshaw, the special master, as pages 186 and 187 among

1 the pages that she needed to conduct additional review on
2 to determine whether they were privileged.

3 She said that she went through the
4 documents. Things that were obviously privileged she
5 took out and put in the obviously privileged pile.
6 Things that were obviously not, she put in the obviously
7 not pile. And everything in between, she gave a number
8 to so that she could review it page by page. These
9 two pages were right together. Now, that may mean and it
10 is certainly easy to fold up pages and put them into the
11 box if they are right together, you folks could consider
12 that. But the other page that the defendant denied was
13 his -- your Honor, may I approach to get an original?

14 THE COURT: Certainly.

15 MR. WOLFE: The other page is Exhibit 38. This is
16 an AB membership list that also came from the defendant's
17 cell, and its number is SAHA 26. So there were at least
18 26 taken from 186. There are 160 pages of uncertainly or
19 possibly privileged materials between this page and
20 Exhibit 1 when Julie Fox Blackshaw looked at it. That
21 doesn't count the number of certainly privileged pages
22 that she took. It doesn't count the number of certainly
23 nonprivileged pages that she took, but there were at
24 least 160 pages between them, and that is where it came
25 from. Excuse me.

1 Defendant said in argument about how Al
2 Benton, how Benton got his sentence reduced to
3 four-and-a-half years for all those murders at Lewisburg,
4 and maybe he has some time to do on another sentence, I
5 don't remember. Well, I submit to you that the testimony
6 was Al Benton has some time to do on another sentence.

7 He has a life sentence. He will begin his
8 four-and-a-half years when he is paroled. He is 60 now.
9 If he begins tomorrow, he will get out when he was
10 64-and-a-half. If he is paroled when he is 97, he will
11 get out when he is 101-and-a-half. And the parole
12 commission will decide. Defendant says to you the
13 government is subtle. They are very subtle. They never
14 promise anything. They say we will write you a letter.

15 That is exactly right. That is what we say.
16 We will write you a letter, and whoever decides decides,
17 and the parole commission when they read the government's
18 letter for Al Benton in 2007, they said no.

19 And in 2009 when Al Benton has his next parole
20 commission hearing, the government will write another
21 letter saying what Al Benton has done, and the parole
22 commission will decide. The sentencing judge decides
23 about rule 35 motions. Russell Hale got one and then
24 committed another crime and went back to prison.

25 Well, maybe he will ask for another rule 35

1 motion, and if he does, the government will write an
2 honest letter describing his cooperation and the
3 sentencing judge will decide. Russell Hale didn't think
4 his chances were very good. He said, you know, I got a
5 time cut, and then I committed another crime, and maybe
6 they won't like that. Yeah. Maybe they won't. And if
7 they don't, if the sentencing judge doesn't, he won't get
8 any time off his second go around, and maybe that is
9 where justice lies. It is the sentencing judge who will
10 determine that.

11 Defendant said some things about Jessie Van
12 Meter. Jessie Van Meter ran the table without any orders
13 or any help from anybody. He went from being in a camp.
14 He fought and beat and assaulted his way from a camp, for
15 God's sake. No fence. You can walk away from a camp to
16 Marion? Yes, he did.

17 Defendant said he makes a lot of excuses.
18 Well, maybe he is ashamed. He ought to be ashamed. The
19 question always is, and you folks unfortunately have to
20 decide it, is was he telling you the truth when he
21 testified? He ought to be ashamed of what he did. He
22 did three-and-a-half more years. He did 30 more months
23 in this case. He plead guilty because he carried the
24 message about the Lewisburg murders from the defendant to
25 ADX, and the government charged him for it.

1 The defendant didn't kill anybody at
2 Lewisburg. He didn't even order it done. Al Benton and
3 Henry Houston and Wayne Bridgewater did the killing, and
4 Barry Mills and TD Bingham did the ordering but Dave
5 asked them to. That is what he is charged with. And
6 Jessie Van Meter carried the message, and he did 30 more
7 months for it.

8 Defendant said Jessie Van Meter didn't have to
9 beat up Billy Strobel. He did it all by himself. Well,
10 that is not the testimony, actually. The testimony was
11 that Dave Sahakian and Michael Wagner were talking to
12 one another and signaling to Jessie Van Meter that they
13 wanted Billy Strobel beat, and my recollection is Van
14 Meter signaled back, do you want him stabbed, and they
15 signaled, no, I just want him beat. And he beat him, and
16 defendant says he was auditioning.

17 I got to tell you. This is only argument, but
18 I love that word choice. He was auditioning. He was
19 auditioning for the big team. He was a Dirty White Boy,
20 one of the farm team members who wanted to go with the AB
21 and he did. The kite Exhibit 152 which maybe I won't
22 show you because I am running out of time. Exhibit 152
23 is one of the kites that Mike Klaker got from Steve Scott
24 and turned over to Danny Shoff at the ADX, and it says we
25 are at on-site war with the DC Toads only.

1 It is the DC Toads only because Mac and Dave
2 prevailed upon the Dirty White Boys to take the BGF and
3 the El Rukns off the list, but down below, there is so
4 much news, so little time, Jessie stabbed a DC
5 eight times in G unit.

6 Kevin Roach or Kevin, head counselor, John
7 McGinley counselor security, Gato, counselor, Glenn,
8 counselor, several more names. They are up. Russell was
9 up, Mike W. is in. Jessie is in in 1997, despite the
10 fact that defendant said to you Jessie Van Meter wasn't
11 even a member. He wasn't a member when he beat Billy
12 Strobel for the defendant. He became a member in 1997 at
13 the ADX, and he was a member in 1999 when he was called
14 to building 63 with the rest of the AB's to lie for Mike
15 McElhiney at his trial when Dave became a commissioner.

16 I don't even understand this. David said,
17 defendant says in his argument about watch your back
18 lists, you heard all manner of cross-examination and
19 testimony from Brandon Kitchen about watch your back
20 lists. Well, Dave Sahakian said they weren't watch your
21 back lists. Dave Sahakian said when I came into I unit,
22 D range on February 14th after IU Bailey got the
23 daylights whaled out of him and they told me they had
24 been making knives and lists. He didn't say they were
25 making watch your back lists. He said they were making

1 target lists to figure out who to kill, and I told them
2 don't put the BGF on there. There are too many of them,
3 and don't put the El Rukns on there either. Defendant
4 says I shouldn't be punished because Captain Metters came
5 to me and said get the Dirty White Boys to stop
6 race-baiting and cutting the security devices and the
7 like on the tier. He is not to be punished for that.

8 It is circumstantial evidence that he had the
9 power over the Dirty White Boys that all the evidence in
10 the case says he has, and, moreover, defendant said on
11 the stand, and I told the Captain I would do it, and I
12 did it.

13 There was no more race-baiting. There was no
14 more cutting security devices, and there are no more
15 assaults from March 17th, I think, whatever the date of
16 the protective custody hearing was. That is there
17 weren't anymore until July 22nd, Wayne Alton punched the
18 defendant in the face in a basketball game. Interracial
19 basketball game at Marion. What could be more wholesome
20 than that?

21 On the other hand, the defendant said to you,
22 in his testimony, that calling somebody a rat is a felony
23 offense. That is like punching somebody in the face, and
24 what did Dave Sahakian do when Wayne Alton punched him in
25 the face? He told Rayo Oeschle and Dewey Lee kill him,

1 and on August 27th, 1997, they tried very hard.

2 They stabbed Wayne Alton 71 times and Dewey
3 said, Mr. Lee, Dewey Lee said to you from the stand, I
4 heard the deuces go off, and I said to Rayo, the CO's are
5 coming, let's get out of here. And Oeschle said, I have
6 one more thing to do, and he went reached down and he
7 stabbed Wayne Alton's left eye out and they left. And
8 the defendant thereafter, joked at the top of his lungss
9 while Wayne Alton was on the tier and could hear it that
10 Rayo and Dewey Lee were his favorite ophthalmologists.

11 So the defendant had the power to tell the
12 Dirty White Boys to stop to please Captain Metters and to
13 avoid himself being placed into protective custody with a
14 PC jacket. He could do that in March, but four months
15 later, when he thought maybe Captain Metters wasn't going
16 to be able to pin it on him or when he was just so
17 enraged because he had been hit in the face, a felony
18 offense in his culture, he could say, kill Wayne Alton
19 and they would do it for him or tried hard.

20 Daneen Adams. Defendant says she never
21 mentioned David Sahakian. She didn't.

22 MR. SHOSTAK: I think the time has expired.

23 THE COURT: I will be in charge of that. Thank
24 you.

25 MR. WOLFE: I better hurry. Several times the

1 point is made nobody caught the defendant on phone
2 monitoring or visiting monitoring or mail monitoring.
3 Well, he didn't have to. He is killing people right
4 there in Marion. He runs Marion. He doesn't have to use
5 the mail or the phone. He can yell down the range or he,
6 because he is an orderly sometimes, as you heard, he can
7 walk down the range and say kill him for me or I will
8 kill you. He doesn't get caught because he doesn't have
9 to.

10 And Daneen Adams, they made fun of her for
11 starting out as a secretary, but she never heard the
12 defendant on mail monitoring because when he needed to
13 send a message to the ADX, he sent it with Mike Wagner
14 and Jessie Van Meter who was transferred. He didn't have
15 to do it in the mail.

16 I better hurry. This is a little point but
17 useful. Defendant says Russell Hale asked me what
18 happened to Bubba, and I said I don't know. And why
19 would he ask me, if I wasn't involved, or, I guess, why
20 would I say I don't know if I wasn't involved? Well,
21 because they are already cooking up the defense. These
22 people aren't stupid. They know they are going to kill
23 Bubba Leger. Allan Hawley was asked to do it first, and
24 then the cup passed from him because on August 9th, 1995
25 you will find in Exhibit 269 Allan Hawley came out of the

1 SHU on August 9th and he couldn't kill Bubba Leger.

2 So from August 9th until Bubba is killed on
3 August 25th, what is that? 16 days. They know they are
4 going to kill him, and they got to get somebody else in
5 place. And while they are doing that, they have the
6 sissy shank made and they figure out what the story is
7 going to be.

8 And the defendant is going to say, I mean, I
9 am surprised he didn't say that he asked, golly, what
10 happened out there as though he didn't know. He knew.
11 He just knew enough to pretend that he didn't.

12 Well, I will say two more things quickly lest
13 I trample on the court's patience. Defendant says there
14 is nothing in this case but lying government witnesses
15 and lying government employees. Well, that is just not
16 so. It is the kites and the calls and the letters that
17 enable you folks to say these government witnesses told
18 the truth. They are murderers. They are bank robbers.
19 They are assaulters. Some of them kept the kites.

20 Exhibit 96 is -- Exhibit 96 is one of Mac --
21 wrong one. Maybe it is 54. Exhibit 54. I hope, yes.
22 Exhibit 54 is one of McElhiney's kites to Allan Hawley,
23 and it says, did you know Steve O, Beave, RD, Whitey are
24 packing out Monday. That leaves me, you, Dave and Zig.
25 That is the AB team at Leavenworth. Steve Ritter,

1 Beaver, Charles Moorman, RD, Ronald Dennis, Whitey,
2 Michael Eyselle, they are leaving. It leaves me,
3 McElhiney, you, Hawley, Dave Sahakian and Ziggy. You
4 don't have to believe that it is only the witnesses
5 because it is not. Defendant says it is because he
6 wishes it was.

7 Michael -- no. Duck MacDaugherty said to you
8 folks, nobody likes a rat because they betray your
9 secrets. And if the corrections officers, if the cops
10 know your secrets, they will take you down.

11 One of the reasons the defendant hates rats,
12 I suppose is because tale-tellers are not particularly
13 liked in any society, but one of the other reasons is
14 racketeering takes place in secret. That is how they get
15 away with it. It is why they kill them if they come to
16 the government or to you and tell you about it.

17 But some of these people, Allan Hawley and
18 Mike Klaker, kept the kites, and Daneen Adams intercepted
19 others. That is this case. That is enough. Thank you
20 very much, your Honor.

21 He is guilty, and I urge you to find him so.

22 THE COURT: Ladies and gentlemen, when you begin
23 your deliberations, you should begin by electing
24 one member of the jury as your foreperson, and that
25 person will preside over your deliberations and speak for

1 you here in court. You will then discuss the case with
2 your fellow jurors to reach agreement if you can do so,
3 and your verdict whether guilty or not guilty must be
4 unanimous.

5 Each of you must decide the case for yourself,
6 but you should do so only after you have considered all
7 the evidence, discussed it fully with the other jurors
8 and listened to the views of your fellow jurors.

9 Do not be afraid to change your opinion if the
10 discussion persuades you that you should, but do not come
11 to a decision simply because other jurors think it is
12 right. It is important that you attempt to reach a
13 unanimous verdict but, of course, only if each of you can
14 do so after having made your own conscientious decision.
15 Do not change an honest belief about the weight and
16 effect of the evidence simply to reach a verdict.

17 Your verdict must be based on the evidence and
18 on the law as I have given it to you in these
19 instructions. However, nothing that I have said or done
20 is intended to suggest to you what your verdict should
21 be. That is entirely for you to decide.

22 Some of you have taken notes during the trial.
23 Whether or not you took notes, you should rely on your
24 own memory of what was said. Notes are only a device to
25 assist your memory. You should not be overly influenced

1 by notes.

2 You may not consider punishment in deciding
3 whether the government has proved its case against the
4 defendant beyond a reasonable doubt.

5 All right. A verdict form has been prepared
6 for you, and the form includes general verdicts to be
7 filled out for the defendant on each count, and it also
8 includes special verdicts to be filled out for the
9 defendant as to each racketeering act charged in count 1.

10 After you have reached unanimous agreement on
11 the verdicts, your foreperson will fill in the form that
12 has been given to you. This is the form I am showing you
13 and then the foreperson will sign it by putting his or
14 her juror number, that is the number on the badge, and
15 then advise the bailiff that you are ready to return to
16 the courtroom.

17 Keep in mind a couple of things. The verdict
18 form should be -- not be handed to the bailiff. The
19 presiding juror, the foreperson holds onto the verdict
20 form at all times, and when the bailiff escorts you to
21 the courtroom, you will hand the verdict form to me, but
22 you don't give it to the bailiff. The presiding juror,
23 the foreman holds on to the verdict form.

24 Also, I will skip ahead a little bit, and I am
25 going to tell you in a few moments about all the things

1 that you will have with you in the jury room. One of the
2 things that you will have is you will have, as I said,
3 the original of the verdict form to be signed, if you
4 reach a unanimous verdict, signed by the juror number.
5 And we also give you 12 copies that will be your working
6 copies so as you go through the verdict form as you are
7 deliberating and discussing, you will each have a working
8 copy.

9 And the original, the one that would be signed
10 if you reach a verdict, is clearly stamped original, and
11 it is a little faint. This one is one of the copies. So
12 your working copies are signed copies, and you can write
13 on them and do whatever you wish as you are deliberating.

14 This is a pretty straightforward form, but I
15 will go ahead and explain it to you. As I said a moment
16 ago, it goes count by count, and as to count 1 which as I
17 instructed you is the substantive Rico offense, you are
18 asked, as for all the counts, to make a finding of either
19 guilty or not guilty. As to count 1, as it instructs you
20 on the form, if you find the defendant guilty on count 1,
21 then you go through and answer as to count 1, specific
22 questions as to each of the racketeering acts that I
23 instructed you on. That is racketeering act 10, 20, 29,
24 30, 34 and 37, and each of them is described briefly as
25 to what each of them is about. Then there is -- then you

1 go on to count 2. Then you go on to count 3, count 6 and
2 count 7.

3 If it becomes necessary during your
4 deliberations to communicate with me, you may send a note
5 through the bailiff, signed by your foreperson or by
6 one or more members of the jury, and, again, in the
7 folder that I will show you in just a moment, there are
8 blank note forms that you can use for that purpose.

9 Just after you, any of you or the foreperson
10 writes the note, you fold it up, put it in the envelopes
11 that are provided, seal that and send it out through the
12 bailiff to me. But no member of the jury should ever
13 attempt to communicate with me except by a signed
14 writing, and I will respond to the jury concerning the
15 case only in writing or here in open court.

16 If you send out a question, I will consult
17 with the lawyers before answering it, and that may take
18 sometime. You may continue your deliberations while
19 awaiting the answer to any question.

20 Remember that you are not to tell anyone
21 including me how the jury stands numerically or otherwise
22 on the question of the guilt of the defendant as to any
23 of the counts until after you have reached a unanimous
24 verdict or have been discharged.

25 So, in other words, if you send out a question

1 never put in any question, if the jury has taken -- if
2 you have taken a poll amongst yourselves, never put in
3 any question that you send out how the jury stands.

4 Let me tell you a couple of other things.

5 You now have a little more freedom to decide when and how
6 often you want to take brakes and recesses during your
7 deliberations. However, you may only deliberate or
8 discuss the case in any fashion when all the jurors are
9 present in the jury room and only in the jury room. So
10 if a juror leaves the jury room to use the bathroom, or I
11 don't know if any of you are smokers, to go outside and
12 have a cigarette or for any reason, then all
13 deliberations, all discussion about the case has to stop
14 immediately, and you can only begin deliberating or
15 talking about the case when all 12 jurors are present in
16 the jury room.

17 As I told you at the beginning of the case you
18 won't have a transcript of the trial testimony to
19 consult. If you need to have certain testimony from the
20 trial read back to you, if that becomes important to you
21 during your deliberations, you may send us out a note
22 asking for that, and if so, then, once the court reporter
23 finds that portion of the transcript, then you will
24 return to the courtroom together with all of us here, and
25 in the presence of all the parties and counsel in the

1 court, then the court reporter will read back to you the
2 portions of the testimony that you request.

3 And, again, that takes a little bit of time
4 for the court reporter to find what it is you are asking
5 for and to collect everyone. So you can continue
6 deliberating in the meantime, and in order that we make
7 the best use of your time, if you make any requests for
8 read back of testimony, be as specific as possible as to
9 which witness it was and what is -- and what your
10 question is, that will help the court reporter, help all
11 of us get exactly the testimony that you need.

12 Now, in the jury room, you will have with you
13 all of the exhibits that were actually admitted into
14 evidence. Sometimes things were referred to that weren't
15 admitted into evidence, but everything that was actually
16 admitted into evidence, you will have with you. Well,
17 and there is a few exceptions to that. You won't have
18 any of the weapons. If you want to see -- well, let me
19 tell you all the things you won't have. There is not
20 that many, but there is a few exceptions.

21 Some things that were admitted into evidence
22 you won't have. That would include the weapons, the
23 videotape, and there was an audiotape that was played.
24 If you want to have the videotape played again or the
25 audiotape played, let us know, and we can get that

1 equipment for you. You can listen to that. I know we
2 can do that with the audiotape. You can listen to it as
3 many as times as you like. The videotape you may have to
4 return to the courtroom and we can play it here, but just
5 send us out a note if you want to watch that again.

6 As to the weapons, if you want to see those
7 again, just send us out a note, and you will have to come
8 back into the courtroom, but you can spend as much time
9 as you like. And they will be passed around for you to
10 examine. We can do that. So just let us know if you or
11 any of you feel that is necessary or helpful to you.

12 This is what you will have. (Indicating.)
13 This will have, as I said already, the original of the
14 verdict form, your copies of the verdict form. We make
15 12. We don't put them in your notebooks, but we give you
16 now the 12 copies of all of the instructions, the final
17 instructions that I read to you yesterday and just now,
18 and the blank note forms. And then the envelopes and the
19 verdict form so which looks just like the note form, but
20 there is a box you check to tell us if you reach a
21 verdict that you have reached a verdict.

22 One of the first things that we asked you to
23 do is to inform us by sending us a note signed with your
24 juror number by whoever is your elected presiding juror
25 or foreperson about how long you intend to stay here

1 tonight to deliberate because you can, within reason, set
2 your own hours. So if you want want to stay until 5:00
3 instead of 4:30 or go home at 4:00 instead of 4:30, that
4 is fine. And what time you intend to return tomorrow
5 within a half an hour of 9:00 o'clock. So if you all
6 want to start at 8:30, that is fine. If you want to
7 start at 9:30, that is fine, just please let us know.

8 And if you reach a unanimous verdict, as I
9 have instructed you, notify us by just sending out a note
10 with the box checked indicating that the jury has reached
11 a verdict, but, again, the presiding juror should keep
12 the verdict form and bring the verdict form into the
13 courtroom. Do not hand it to the bailiff.

14 Thank you, ladies and gentlemen. Now, we
15 need to swear the bailiff.

16 (The bailiffs were sworn.)

17 THE COURT: All right. Jurors 1 through 12, you
18 you are now in the custody of the bailiffs, and you may
19 retire to the jury room. And I will ask the
20 three alternates to wait here for just a moment.

21

22 (The following proceedings were held outside the
23 presence of the jury, in the presence of the
24 alternates:)

25

1 THE COURT: Well, your service is not quite over,
2 but because we may still need you if one of the jurors
3 who I have just released to begin deliberating should
4 become ill or is otherwise unable to continue in
5 deliberations, then we would contact you, and I would
6 then instruct the jury that they have to begin the
7 deliberations all over with the new juror participating.

8 However, you don't have to show up here
9 anymore. You are free to go about your business as long
10 as -- Ms. Dillard will go outside in just a moment and
11 get your contact information, so if we need to get hold
12 of you, we are able to do so.

13 But in the event that I don't see you again, I
14 am going to at this time, go ahead and thank you, and if
15 it turns out that we do need you again, I will thank you
16 twice.

17 I sometimes -- well, I think that serving as
18 an alternate juror is probably the most thankless task
19 that we ask jurors to do, but I want you to know that it
20 is -- it may seem thankless, but you are just as
21 appreciated as all of the other jurors. And I say that
22 on behalf of myself, the court, and on behalf of the
23 parties too. This case, we sent out -- this is an elite
24 jury, and I really mean that. We had to send out a very
25 large number of questionnaires and summonses to get.

1 MR. GREEN: Excuse me, Judge. Can we approach
2 sidebar just for a second?

3 THE COURT: Certainly.

4 (The following proceedings were held at sidebar:)

5 MR. GREEN: I just have an uncertainty, and I
6 didn't bring my jury list with me. The gentleman now
7 sitting in seat 1 with the cane, he had moved from
8 another position. What position did he move from?

9 MR. WOLFE: He was 14.

10 THE COURT: Yes. He is 14.

11 MR. GREEN: Okay. Good. I just, before you got
12 too far, I just wanted to make sure that I was absolutely
13 positive.

14 THE COURT: He would be our second alternate.

15 MR. GREEN: Okay. Thank you, Judge.

16 Okay.

17 (The following proceedings were resumed in open
18 court:)

19 THE COURT: What I started to say was that we had
20 to send out an awful lot of questionnaires to end up with
21 the 16 people who served on this jury, partly, as you
22 might expect, because of the length of time, you know,
23 most jury trials in our court last a week and the huge
24 majority of them don't last more than two weeks. This is
25 a really unusual trial. Every trial is the most

1 important case in the world to the parties involved.

2 Sometimes people ask me what is the most
3 important case you have ever worked on, and I think that
4 the right answer to that question is the case I am
5 working on today because that case is the most important
6 case, but this case is -- it is a very important case to
7 everyone, and I really appreciate the sacrifice that has
8 been involved for all of you and the time away from your
9 family commitments, and your, all the other things you
10 could be doing every day for the last two months to come
11 in and serve the justice.

12 And then, not be able to, after all this time,
13 hearing me say those admonitions several times a day to
14 you, to not be able to go in and talk about it with
15 the people you have met during the course of this trial
16 is, I think it is a supremely frustrating thing, but I
17 have to ask you not to talk about the case until, for a
18 few more days, until you are notified that the jury in
19 this case either you are called in to serve or the jury
20 has been discharged. We will call you and notify you.

21 We, as American citizens, we enjoy many
22 rights. I don't know if enjoy is the right verb, but we
23 have many, many rights. And we are not really, most of
24 us are not really asked to do much for our country. Some
25 people are asked to make a real sacrifice and perform

1 military service, and apart from that, the only thing
2 that we really are asked to do the only duties we have in
3 exchange for the rights that we have and the privileges
4 we enjoy and the great bounty that we enjoy living here
5 is to vote, pay taxes and to do jury duty.

6 And it is easy to talk about patriotism, but
7 it is a lot harder to do what you all have done, and that
8 is to show your loyalty and your love for your country by
9 serving and serving on a jury trial that lasted not for a
10 week, not for two weeks, but for two months, and that is
11 a sacrifice. And I really appreciate it.

12 So, again, on behalf of the court, and on
13 behalf of all the parties here, I thank you for your
14 service. Thank you very much. And we will be in touch
15 to let you know if you are needed, or if you have been
16 discharged. But whichever of those occurs, please know
17 that your service is more deeply appreciated than I can
18 really ever convey to you.

19 Thank you. You are excused, and Mrs. Dillard
20 will get your contact information. And leave your
21 notebooks here. They will be in safe storage.

22

23 (The following proceedings were held outside the
24 presence of the jury:)

25

1 THE COURT: All right. We are on the record out
2 side the presence of all members of the jury now.

3 Counsel, have you already met with Ms. Dillard
4 to make sure that we are in complete agreement about
5 which exhibits have been admitted and will go back to the
6 jury?

7 MR. AKROTIRIANAKIS: Ms. Dillard raised the issue
8 about, in the boxes, there is not Exhibit 252, and I also
9 can't find it, and it is my recollection that it wasn't
10 shown at all to any witness at any time, although, that
11 was one of the inmate history quarters for Michael
12 Barclay. It was admitted by stipulation at the beginning
13 of the trial.

14 THE COURT: Does somebody have a copy of it?

15 MR. AKROTIRIANAKIS: I may be able to find one in
16 the office, but the government has no objection to it
17 simply being stricken. As I say, I don't think it was
18 shown to any witness during trial.

19 MR. GREEN: I am pretty sure we have a copy that I
20 can give to the government.

21 THE COURT: Well, I may have a copy of it here
22 although not if it was brought later.

23 MR. AKROTIRIANAKIS: No, your Honor. It would
24 have been here from day one.

25 THE COURT: Then it should be up here. She can

1 take my copy.

2 MR. AKROTIRIANAKIS: If it is, your Honor. I fear
3 it might not be.

4 THE COURT: If it isn't, then do you have any
5 objection to having it stricken?

6 MR. GREEN: I do because I don't, at this point in
7 time, I can't recall if it was referenced.

8 THE COURT: Then let's get a copy.

9 MR. GREEN: I am sure I can get a copy.

10 THE COURT: Even if it is not sent immediately
11 because I do want to send everything back.

12 MR. AKROTIRIANAKIS: Yes, your Honor.

13 THE COURT: Anything else?

14 MR. GREEN: Just the procedure the court uses for
15 witness or for attorneys being present for questions.

16 THE COURT: Right now, when I leave the bench, you
17 are in the custody of Ms. Dillard until she releases you
18 when she is satisfied that she has all the exhibits ready
19 to go back to the jury. After she releases you from that
20 initial custody, then you have to be available on 15
21 minutes call.

22 MR. GREEN: Okay.

23 THE COURT: So you have to give her the cell phone
24 numbers if you are in the building, and if you are going
25 to use one of the conference rooms upstairs, let us know

1 that too. So it might be faster to find you that way.
2 And as soon as we hear from the jury how late they are
3 going to be here this afternoon, we will convey that
4 information to you. All right. Anything else?

5 MR. AKROTIRIANAKIS: No, your Honor.

6 THE COURT: All right.

7

8 (Recess from 2:57 to 3:36.)

9

10 MR. WOLFE: Your Honor, there, apparently has
11 never been an Exhibit 252. It is not in the court's
12 binder or defense counsel's binder, and the defendant's
13 binder prepared by the defense for the same witness also
14 doesn't have the document, and because no one can find
15 it, we believe it was never shown. It was admitted en
16 masse with all the other IHQ's, and the government and I
17 believe jointly we ask that it be withdrawn from the.

18 THE COURT: Admitted exhibits?

19 MR. WOLFE: Yes, your Honor.

20 MR. GREEN: Defense joins in that request, Judge.

21 THE COURT: All right. Thank you. Then
22 Exhibit 252 is ordered stricken from the list of admitted
23 exhibits. Thank you.

24 MR. WOLFE: Thank you, your Honor.

25 (The proceedings were concluded.)

1

2 CERTIFICATE

3

4

5 I hereby certify that pursuant to Section 753, Title 28,
6 United States Code, the foregoing is a true and correct
7 transcript of the stenographically reported proceedings held
8 in the above-entitled matter and that the transcript page
9 format is in conformance with the regulations of the
10 Judicial Conference of the United States.

11 Date:

12

13

14

15

16 Katie E. Thibodeaux, CSR No. 9858

17

18

19

20

21

22

23

24

25

EXHIBIT E

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.

Docket No.

CR 02-938 (A) VAP

DAVID MICHAEL SAHAKIAN

Defendant

akas: Big Dave; Freddie T. Fishook, Robert Hall

Social Security No. 8 1 6 3

(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

MONTH	DAY	YEAR
04	20	2009

In the presence of the attorney for the government, the defendant appeared in person on this date.

COUNSEL

WITH COUNSEL

JOSEPH GREEN, CJA, Appointed

(Name of Counsel)

PLEA

GUILTY, and the court being satisfied that there is a factual basis for the plea. NOLO NOT CONTENDERE GUILTY

FINDING

There being a finding/verdict of GUILTY, defendant has been convicted as charged of the offense(s) of: Racketeer Influenced and Corrupt Organizations Conspiracy in Violation of 18 U.S.C. § 1962(d) as charged in Count Two of the First Superseding Indictment.

**JUDGMENT
AND PROB/
COMM
ORDER**

The Court asked whether defendant had anything to say why judgment should not be pronounced and the defendant addressed the Court. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that:

**SPECIAL
ASSESSMENT**

The defendant shall pay to the United States a special assessment of \$100, which is due immediately.

FINE

Pursuant to U.S.S.G. § 5E1.2(e) of the Guidelines, all fines are waived as it is found that the defendant does not have the ability to pay a fine.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the court that the defendant, David Michael Sahakian, is hereby committed on count two of the first-superseding indictment to the custody of the Bureau of Prisons to be imprisoned for a term of 240 months.

Upon release from prison, the defendant shall be placed on supervised release for a term of three years under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office and General Order 318;
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer;
3. During the period of community supervision the defendant shall pay the special assessment in accordance with this judgment's orders pertaining to such payment;

USA vs. DAVID MICHAEL SAHAKIAN

Docket No.: CR 02-938 (A) VAP

4. The defendant shall cooperate in the collection of a DNA sample from the defendant; and
5. The defendant may not associate with anyone known to him to be a member of the Aryan Brotherhood or the Brand.

The Court RECOMMENDS that the defendant be transferred as soon as possible to the Bureau of Prisons Federal Medical Center located in Rochester, Minnesota for an assessment, evaluation and medical attention given to the defendant's degenerative disk disease disproportionately involving the L6-S1 and L4-L5 levels and also multiple levels in the lower thoracic spine. In addition, evaluate the multilevel facet arthropathy in the lower thoracic spine, together with possible unilateral left-sided spondyloysis involving the lowermost lumbar vertebrae, and for medical attention given to his hepatitis "C" condition.

DEFENDANT INFORMED OF RIGHT TO APPEAL.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

April 28, 2009

Date

Virginia A. Phillips
U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

April 28, 2009

Filed Date

By M. Dillard

Deputy Clerk



The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE

While the defendant is on probation or supervised release pursuant to this judgment:

USA vs. DAVID MICHAEL SAHKIAN

Docket No.: CR 02-938 (A) VAP

1. The defendant shall not commit another Federal, state or local crime;
1. the defendant shall not leave the judicial district without the written permission of the court or probation officer;
2. the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least 10 days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed or administered;
9. the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. the defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to conform the defendant's compliance with such notification requirement;
14. the defendant shall, upon release from any period of custody, report to the probation officer within 72 hours;
15. and, for felony cases only: not possess a firearm, destructive device, or any other dangerous weapon.

The defendant will also comply with the following special conditions pursuant to General Order 01-05 (set forth below).

STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS

The defendant shall pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment pursuant to 18 U.S.C. §3612(f)(1). Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g). Interest and penalties pertaining to restitution , however, are not applicable for offenses completed prior to April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant shall pay the balance as directed by the United States Attorney's Office. 18 U.S.C. §3613.

The defendant shall notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. §3612(b)(1)(F).

The defendant shall notify the Court through the Probation Office, and notify the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. §3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution-pursuant to 18 U.S.C. §3664(k). See also 18 U.S.C. §3572(d)(3) and for probation 18 U.S.C. §3563(a)(7).

Payments shall be applied in the following order:

1. Special assessments pursuant to 18 U.S.C. §3013;
2. Restitution, in this sequence:
 Private victims (individual and corporate),
 Providers of compensation to private victims,
 The United States as victim;
3. Fine;
4. Community restitution, pursuant to 18 U.S.C. §3663(c); and
5. Other penalties and costs.

USA vs. DAVID MICHAEL SAHAKIAN

Docket No.: CR 02-938 (A) VAP

SPECIAL CONDITIONS FOR PROBATION AND SUPERVISED RELEASE

As directed by the Probation Officer, the defendant shall provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant shall not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant shall maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds shall be deposited into this account, which shall be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, shall be disclosed to the Probation Officer upon request.

The defendant shall not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

RETURN

I have executed the within Judgment and Commitment as follows:

Defendant delivered on _____ to _____
Defendant noted on appeal on _____
Defendant released on _____
Mandate issued on _____
Defendant's appeal determined on _____
Defendant delivered on _____ to _____
at _____
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

By _____

Date _____ Deputy Marshal

CERTIFICATE

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

USA vs. DAVID MICHAEL SAHAKIAN

Docket No.: CR 02-938 (A) VAP

Clerk, U.S. District Court

By _____

Filed Date

Deputy Clerk

FOR U.S. PROBATION OFFICE USE ONLY

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant _____
Date _____

U. S. Probation Officer/Designated Witness _____
Date _____

EXHIBIT F

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA

3 WESTERN DIVISION

4 HON. JUDGE VIRGINIA A. PHILLIPS, JUDGE PRESIDING

5
6 UNITED STATES OF AMERICA,)
7)
8 Plaintiff,)
9 vs.) NO. 02-CR-0938-VAP-9
10)
11 DAVID SAHAKIAN,)
12)
13 Defendant.)
14 _____)

15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 Los Angeles, California

17 Monday, April 20, 2009

18
19
20
21
22 LISA M. GONZALEZ, CSR 5920 - Official Reporter
23 Roybal Federal Building
24 255 East Temple Street, Room 181-C
Los Angeles, CA 90012
(213) 621-7709; csrlisag@aol.com

1 **APPEARANCES:**

2 FOR THE GOVERNMENT: THOMAS P. O'BRIEN
3 UNITED STATES ATTORNEY
4 BY: STEPHEN G. WOLFE
5 ASSISTANT UNITED STATES ATTORNEY
6 BY: JOSEPH N. AKROTIRIANAKIS
7 ASSISTANT UNITED STATES ATTORNEY
United States Courthouse
312 N. Spring Street
Los Angeles, California 90012
(213) 894-7408/2467

8 FOR THE DEFENDANT: LERITZ, PLUNKERT & BRUNING, PC
9 BY: JOSEPH L. GREEN
555 Washington Avenue
Suite 600
10 St. Louis, Missouri 63101
(314) 231-9600

1 *Los Angeles, California, Monday, April 20, 2009*

2 **3:06 p.m.**

3 **-o0o-**

4 THE CLERK: Item 16, LA CR-02-938-VAP,

5 United States of America versus David Michael Sahakian.

6 Counsel, please state your appearance.

7 MR. WOLFE: Good morning, Your Honor. Joseph
8 Akrotirianakis and Stephen Wolfe for the government.

9 THE COURT: Good afternoon.

10 MR. GREEN: Good afternoon, Judge. Joe Green for
11 Mr. Sahakian.

12 THE COURT: Good afternoon.

13 This matter is on the Court's calendar for
14 sentencing. There was a motion to continue the sentencing
15 until after the scheduled retrial on the remaining counts,
16 and I issued a ruling denying that motion. I don't --

17 Have both sides seen the ruling on that? It went
18 out on Friday.

19 MR. WOLFE: Yes, Your Honor.

20 MR. GREEN: Judge, I have not -- I flew in last
21 night --

22 THE COURT: Do you want to take a moment and
23 review that?

24 MR. GREEN: Thank you.

25 (Brief pause in the proceedings.)

1 MR. GREEN: Judge, the defense has had an
2 opportunity to review the Court's ruling.

3 THE COURT: All right. As you can see from the
4 ruling, I've considered the request for a continuance of the
5 sentencing and considered -- I'm disturbed by the -- what I
6 consider the untimely request because the schedule -- in the
7 sense that the sentencing on Count 2 to take place before
8 the retrial on the other counts has been discussed with
9 counsel for both the government and the defendant on a
10 number of occasions.

11 And so I was disturbed or taken aback by the
12 April 3rd filing of the motion to continue it, but I
13 considered very carefully the argument that was made that
14 there was a potential for a violation of the defendant's
15 rights under the Fifth Amendment or other Constitutional
16 rights if he was sentenced before the retrial, and that
17 argument was framed by the defense as a potential Fifth
18 Amendment violation because he would not feel free to
19 allocute or to participate, in the words of the defense,
20 freely and fully in the preparation of the Probation Report
21 or the arguments that the defense wished to make in
22 connection with sentencing.

23 So I considered all those arguments. I did some,
24 as the Court is required to do, researched the issues
25 myself, as well as considering the cases and the authorities

1 cited by the government's opposition to the motion and
2 having done so, to the best of my ability and as
3 conscientiously as possible given the somewhat untimely
4 nature of the motion, am very satisfied that there is no
5 grounds to continue the sentencing.

6 It's -- I would just note, in addition to what I
7 wrote in the written ruling, that it's very often the case
8 that, in my experience, that defendant's decline to discuss
9 the circumstances of the offense even after they've pled
10 guilty. Whether it's actually after a trial or after
11 they've pled guilty, they decline on advice of counsel to
12 discuss the circumstances of the offense with the probation
13 officer. In my experience, that's the case the vast
14 majority of the time. Other than if they wish to express
15 remorse.

16 But, in any event, as I said in the written
17 ruling, the government has taken the position that for the
18 purposes of retrial in this case, it won't use anything that
19 the defendant says if he chooses to allocute except for
20 purposes of impeachment; so there really isn't a Fifth
21 Amendment issue.

22 So apart from what's already -- the Court has
23 already ruled upon -- what's already been raised and the
24 Court has already ruled upon, are both sides ready to
25 proceed today with sentencing?

1 MR. WOLFE: Yes, Your Honor.

2 MR. GREEN: Yes, Your Honor.

3 THE COURT: The Court has reviewed and considered
4 the following -- oh, I'm sorry. Before I get to that.

5 Has the government complied with the Crime
6 Victim's Rights Act in connection with this proceeding?

7 MR. WOLFE: I believe so, Your Honor. The victim
8 witness unit in the office complies with it, I believe, as a
9 matter of course.

10 THE COURT: Are there any victims present, to your
11 knowledge, who wish to be heard today?

12 MR. WOLFE: None of which the government is aware
13 of, Your Honor.

14 THE COURT: All right. Then, the Court has
15 reviewed the following documents: The Presentence Report,
16 which was disclosed on January 26th.

17 Have you reviewed that with your client,
18 Mr. Green?

19 MR. GREEN: I have, Your Honor.

20 THE COURT: Mr. Sahakian, good afternoon.

21 THE DEFENDANT: Good afternoon.

22 THE COURT: Mr. Sahakian, have you seen the
23 Probation Officer's report?

24 THE DEFENDANT: Yes -- yes, I have.

25 THE COURT: And you've had a chance to discuss it

1 with your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: In addition to the Presentence Report;
4 the Government's Objections to the Presentence Report, which
5 were filed on January 29th; the Defense Sentencing
6 Memorandum filed on April 3rd, and the Defendant's
7 Objections to the Presentence Report filed on February the
8 9th.

9 The government's response to the Defendant's
10 Sentencing Memorandum -- the government's response was filed
11 on April 13th.

12 Is this everything both sides have submitted?

13 MR. WOLFE: I believe so, Your Honor.

14 MR. GREEN: Yes, Your Honor.

15 THE COURT: Does either side have any objections
16 to the Presentence Report, other than what you've previously
17 set forth in your written filings?

18 MR. GREEN: None. None other than what we've put
19 in our written filings for the defense, Your Honor.

20 MR. WOLFE: No, Your Honor.

21 THE COURT: All right. Let me go through each
22 side's objections and rule on them.

23 I'll start with the government's objections.

24 First the government objected to paragraphs 22 through 28 of
25 the Presentence Report. That is the probation office's

1 calculation of the -- conclusion that the base offense level
2 is 19, which is the general offense level for racketeering.

3 The government argues that the Court should -- the
4 government first made an argument --

5 MR. WOLFE: Your Honor, I don't wish to interrupt
6 but I believe that the government's objection now that I've
7 had time to think about it, is probably ill-considered, and
8 I withdraw it.

9 THE COURT: And you withdrew it, I think, in the
10 footnote in your response; correct?

11 MR. WOLFE: Yes, Your Honor.

12 THE COURT: And that's -- I was about to -- that's
13 fine.

14 So the government now, if I understand it, takes
15 the position that, given the two possible bases, the dealing
16 drugs and the murder for the racketeering charge, that the
17 Court should resolve it as to in favor of the -- a base
18 level of 30; that was the position that you took in the
19 second filing?

20 MR. WOLFE: Yes, Your Honor. I believe that while
21 it is not clear which the jury could have considered, the
22 lowest that it could be, the government submits, is 30.

23 THE COURT: So the government's position is, to
24 resolve any ambiguity, to take the lower of the two; and the
25 base offense level for conspiracy to commit the completed

1 murders of Charles Lugere (ph) or the black inmate at USC,
2 Lewisberg, would be 43; but for the drug conspiracy, it
3 would be 30, so you take the lower of the two.

4 And it's calculated at 30 because, based on the
5 testimony of Alan Hawley as to the amount, that for the
6 seven-month period that Mr. Sahakian was in charge of the
7 drugs that were distributed at Leavenworth, 4 ounces of
8 heroin per month times 7, 28 ounces, or 800 grams of heroin.
9 And under Sentencing Guideline 2D1.1(c)(5), you arrived at a
10 level 30.

11 So I would sustain the government's objection in
12 part as to those paragraphs.

13 As to the defendant's career offender status, the
14 government argues that it doesn't matter that the verdict
15 didn't specify which of the object offenses the jury found
16 he committed. Again, he was convicted of conspiring to
17 carry out a racketeering enterprise through either the
18 murders or the drug distribution, or both, but the
19 Indictment charged only those two types of object offenses
20 and the instructions only covered these types. And I've
21 reviewed again the instructions that the jury was given.

22 The PSR -- the government objects to the
23 statements in the Presentence Report, paragraphs 57, 60, 62,
24 66, 68, and 74, with respect to criminal history. The
25 government's correct that the addition was simply wrong,

1 that criminal history paragraphs should reflect a total of
2 15 points for prior conviction; so the total, actually,
3 should be 18 when you add on the three additional points,
4 not 15.

5 And, then, finally, the Presentence Report,
6 paragraphs 19 and 32, with respect to obstruction of
7 justice, the government argues that the Court's initial
8 guideline calculation should include a two-point -- two
9 points additional -- two points addition to the offense
10 level for obstruction of justice because, according to the
11 government, the defendant gave perjured testimony at trial
12 and on the hearing on the motion to suppress the document
13 found in the defendant's cell during the service of the
14 search warrant.

15 As to the testimony at trial, the defendant denied
16 his role in the conspiracy to murder, in the murder of
17 Lugere (ph) and sending the knife to Greg Story to kill
18 Mr. Lugere (ph.)

19 His discussion with John Gotti regarding the
20 contract to kill, or kill Johnson because of his assault on
21 Mr. Gotti.

22 The government also contends that the testimony
23 regarding Exhibit 1, the Aryan Brotherhood so-called mission
24 statement, was planted in his property by a Bureau of
25 Prisons employee and find his possession of Exhibit 1 was

1 perjured and urges the Court to find -- of course, the
2 standard is preponderance of the evidence for sentencing
3 purposes -- that the defendant obstructed justice.

4 In reviewing the testimony that was given both at
5 trial and at the motion on suppression of evidence, I'm
6 inclined to add the two points for obstruction of justice
7 for the testimony at the hearing on a motion to suppress
8 evidence without reaching the issue of the testimony at
9 trial because I think it is so clear that the motion -- that
10 the testimony at the motion to suppress evidence satisfies
11 the standard for perjured testimony, and that the Court
12 could find -- make that finding by a preponderance of the
13 evidence so very clearly.

14 The testimony that was given and the evidence that
15 was presented at the motion to suppress evidence consisted
16 of -- in the main, it consisted of an accusation against the
17 Bureau of Prisons employees, based on a videotape that was
18 taken at the time that the search warrant was executed; and
19 the gap between what the description of what happened and
20 what was shown on the videotape was just enormous.

21 The officers, the BOP officers are shown during
22 the search under the warrant and one of them is shown
23 looking in one direction. There's no movement shown that
24 would come close to being the planting of evidence or the
25 planting of that document in the defendant's belongings.

1 There's just really no -- there's really no basis for that
2 allegation; and that the testimony by the defendant and the
3 allegations were simply baseless in the Court's weighing of
4 the evidence.

5 And, of course, the Court denied that motion, but
6 it was clearly perjured testimony. It was given again at
7 trial in front of the jury. It was given under penalty of
8 perjury and there was no basis for it, and it was a
9 significant -- I mean, this is sort of an aside because it's
10 obstruction of justice whether or not -- however much time
11 it consumed, but it's a significant consumption of resources
12 both in the pretrial proceedings and during the trial
13 itself. There was simply no basis for that testimony. And
14 the allegations are not borne out by the evidence; so I
15 would impose -- sustain the government's objection to the
16 Presentence Report where the probation officer declined to
17 impose that two-level upward adjustment for obstruction of
18 justice.

19 Turning to the defendant's objections. The
20 defendant objects to the Presentence Report for its reliance
21 on the Indictment for acts defining racketeering activity
22 and points to evidence received at trial that differed from
23 the allegations in the Indictment.

24 First, pointing to the evidence of Glen West and
25 Alan Denton to the effect, according to the defense, that

1 the defendant did not have authority and wasn't a council
2 member; that the ideas in Exhibit 1 were fanciful wishes of
3 Barry Mills. There was conflicting evidence. There often
4 is when there was a trial. If there wasn't conflicting
5 evidence perhaps there wouldn't be a need for a trial, but
6 there was an abundance of evidence from credible witnesses
7 regarding the defendant's power and authority and status in
8 the Aryan Brotherhood organization. And the objections to
9 the remarks in the Presentence Report reflecting that I
10 would overrule.

11 The defendant points to Sentencing Guideline
12 1B1.2(d), which says that substantial care must be taken in
13 applying Subsection D because there are cases in which the
14 verdict does not establish which offense was the object of
15 the conspiracy and argues that here the probation officer
16 was correct to set the base offense level at 19, in
17 paragraph 28 of the Presentence Report. And I've considered
18 that argument carefully, but here the Court has to
19 distinguish between all of the allegations that were in
20 Count 1 and the allegations in Count 2, which was, of
21 course, the only count on which the defendant was convicted
22 and which were considerably narrower. As I've said, that
23 only specified two types of acts that were the object acts
24 for the conspiracy to violate RICO. And so that's -- sets
25 this case apart from the types of -- from the situation that

1 the defendant argues existed here.

2 The second objection that the defendant makes --
3 and he doesn't specify a paragraph number in the Presentence
4 Report, but as to the denial of the points off -- or levels
5 off for acceptance of responsibility. Of course, the
6 defendant, as he has a Constitutional right to do, put the
7 government to its burden of proof at trial. And there are a
8 few exceptions to the general rule, that when that occurs
9 that defendant doesn't qualify for the adjustment for
10 acceptance of responsibility. None of them apply here. The
11 defense argues that because the defendant took the stand and
12 admitted that he was a member of the Aryan Brotherhood and
13 used drugs that he qualifies for acceptance of
14 responsibility adjustment. The Court's not persuaded by
15 that. So I would overrule that objection.

16 The next, the defendant objects to the conclusion
17 in paragraph 40 of the Presentence Report. That is the
18 enhancement to the career offender status based on
19 Sentencing Guideline 4b1.1(a). He argues that he does not
20 meet the second element as required because the instant
21 offense wasn't one of violence. The defense argues that
22 because a racketeering act can include gambling, for
23 example, and that given that there was evidence in the case
24 that sometimes the Aryan Brotherhood, as a racketeering
25 enterprise sponsors gambling in the prisons, that we can

1 only guess that what acts the jurors considered in support
2 of their finding of guilt as to Count 2, that the government
3 didn't meet its burden of proof as to the second element,
4 but the Court declined to accept that argument.

5 The jury was specifically instructed here that in
6 order to convict the defendant on Count 2, they had to agree
7 unanimously regarding the type of predicate acts of murder,
8 attempted murder, or drug trafficking that the defendant
9 agreed would be committed.

10 And only murder and drug trafficking were
11 predicate acts that were alleged in Count 2. So I'd
12 overrule the objection to the extent that it's made on that
13 basis.

14 The defense also argues that the Court should
15 consider other defendants, including defendant Slocum who
16 was sentenced to 151 months. His trial ended with a hung
17 jury, and he pled guilty to Count 2.

18 Cleo Roy and Glen Filkins, who were each sentenced
19 to 121 months. Defendant Steve Hicklin, who was sentenced
20 to 33 months. Mark Nyquist sentenced to 51 months.
21 Gonzalez-Munoz, 39 months. Joseph Principe, 15 months; but
22 that argument goes primarily to a non Guideline issue that
23 is a 3553(a) issue, disparity in sentencing. I'll get to
24 the 3553(a) issues a bit later.

25 In any event, the defendant is incorrect in

1 arguing that the Court must consider sentences of
2 co-defendants. Under 3553(a), sub paragraph two, what the
3 Court considers is in avoiding disparity in sentencing
4 similarly situated defendants charged in similar crimes.
5 Whether these defendants, the co-defendants are similarly
6 situated is an issue that I'd invite further argument for
7 but, most importantly, here whether the defendants went to
8 trial, whether they cooperated with the government, et
9 cetera.

10 Other objections that the defense made. In
11 paragraph 46, he objects to the statement in the PSR that at
12 age 13 he was committed to the Hanna's (ph) Boys Center. I
13 take it that the defense isn't denying that -- anything
14 about the offense, but just where he was committed; is that
15 correct?

16 MR. GREEN: That's correct, Judge.

17 THE COURT: I'd sustain the objection in that
18 case.

19 The defense objects to the statement in the PSR
20 that he has always shown a lack of remorse. He states that
21 as to certain robberies that took place in Fresno, he said
22 he apologized to the judge and one of the female victims.

23 In paragraph ten, excuse me, as to another
24 paragraph -- I don't know which paragraph it was, but as to
25 another statement in the PSR, as to the conviction on

1 October 15th of 1990, where the defendant assaulted another
2 inmate with the inmate's crutch, the defendant claims it was
3 preemptive assault because that inmate had previously
4 assaulted the defendant.

5 It's not necessary for the Court to resolve that
6 objection because it makes no difference in the Court's
7 assessment here.

8 At paragraph 69, that relates to the circumstances
9 regarding an assault on a law enforcement officer when the
10 defendant was being taken into custody, and the defendant
11 denies making that statement. I'd sustain that objection.
12 Again, it makes no difference as to the Court's Guideline
13 Sentencing assessments.

14 The defendant objects to -- or objects to the
15 Presentence Report because he states that from 1991, he has
16 not been involved in any assaults for serious injuries; and
17 for the last eight-and-a-half years, he's had no discipline,
18 prison discipline, for anything involving assaults, and the
19 PSR does not reflect that. I would overrule that objection.

20 But I would sustain the objection to paragraph 19,
21 which states that the defendant is in overall good health.
22 The defendant does have some serious health problems
23 including serious liver disease, including hepatitis and
24 cirrhosis and suffers from serious hypertension -- a serious
25 hypertension condition; so I would sustain the objection to

1 paragraph 19.

2 The defendant's calculation of the Guideline
3 Sentencing Range is -- his base offense level should be 17
4 and that his range is 37 to 46 months.

5 The Court is required first to set forth what the
6 Guideline Sentencing Range is. The Court has consulted the
7 Guidelines and considers them as advisory in determining a
8 reasonable sentence, but the Guidelines are only the
9 starting point in the initial benchmark, according to the
10 Supreme Court in Kimbrough and Gall, and the Court does not
11 presume that the Guideline Sentence is the reasonable one as
12 reminded recently by the Supreme Court in the Nelson case.
13 The Guideline Sentence is one factor among the 3553(a)
14 factors that the Court is to take into account in arriving
15 at an appropriate sentence.

16 Here, the offense level is -- the Court finds that
17 the offense level is 34, and the Court's basis for
18 calculating that is as follows:

19 The base offense level is 30, the racketeering
20 conspiracy through a pattern of racketeering activity
21 involving acts of drug distribution under Sentencing
22 Guideline 2D1.1(c) (5), with no deduction for conspiracy
23 because it was a completed crime, plus two levels because
24 the defendant is a career offender, two levels for
25 obstruction of justice as I explained previously, based on

1 the testimony at the suppression hearing regarding the
2 planting of evidence, results in an offense level of 34; and
3 the Criminal History Category is Category VI. He's a career
4 offender.

5 The defendant's request, as I said earlier, is
6 that he be sentenced to 37 to 46 months, or, in the
7 alternative, no more than 78 months.

8 The government's request is a sentence of 20
9 years. The Sentencing Guideline range exceeds the statutory
10 maximum of 240 months because the Guideline Range, is at
11 level 34, is 262 to 327 months. So the Guideline Range is
12 240 months, which is a statutory maximum.

13 So turning, then, to the 3553(a) factors and
14 starting with the nature and circumstances of the offense.
15 As I said just moments ago, the defendant was convicted of
16 the RICO conspiracy count; two different objects of the
17 charged conspiracy, the drug trafficking and murder objects;
18 and the Court disagrees with the defense's attempts to
19 minimize the seriousness of the evidence that was presented
20 at the trial.

21 The defendant conspired in the drug trafficking at
22 Leavenworth. That's a sufficient basis for the jury's
23 verdict, too. And the harm done in the prison system by the
24 presence of the drugs that are trafficked, as alleged and
25 proven by the government, or the racketeering enterprise

1 here, can hardly be overstated.

2 And there was testimony throughout the months of
3 trial in this case regarding the drug trafficking and the
4 effects of that on -- not just the effects of the drugs, but
5 the -- of the drugs themselves, but the efforts to obtain
6 them, the pressure that's put on other -- on the inmates to
7 participate in the smuggling of the drugs into the prison
8 system, and the effects of the drug trafficking inside and
9 far outside the walls of the prison system. And as I said,
10 the effects of that really can't be overstated.

11 I really couldn't put into words the sum total of
12 the testimony just on that issue and the pressures that are
13 brought to bear on the human beings who are involved.

14 And the defendant's own physical state is largely
15 due to the effects of the availability of drugs during the
16 entire time that he's been incarcerated, but that's just one
17 small effect of the drug trafficking in the Bureau of
18 Prisons.

19 The history and characteristic of the defendant.
20 The defendant argues that for the past 18 years he's not
21 participated in nor been convicted of any violent crimes;
22 that he's done his time by trying to be his own man; that
23 he's not a commissioner in the Aryan Brotherhood and had no
24 apparent authority in the Aryan Brotherhood; that he has
25 significant medical problems -- as I said, hypertension,

1 degenerative disk disease, cirrhosis of the liver -- he does
2 have significant health problems, but the evidence at trial
3 regarding his position in the Aryan Brotherhood, the
4 evidence regarding the principals of the Aryan Brotherhood
5 as set out in Exhibit 1, there was abundant evidence
6 confirming that, confirming his position.

7 The advantage that he took of his position in
8 pressuring others to participate in drug trafficking and
9 the -- of course, there was some conflicting evidence on
10 that. The evidence was powerful and persuasive to support
11 the jury's verdict.

12 The defendant has a lengthy criminal history
13 starting as a young juvenile. He's never been amenable to
14 supervision. I think virtually all of his crimes, I think
15 all of his crimes were violent. He usually claims that the
16 other party is the aggressor. At age 23 he was guilty of
17 manslaughter when he shot into a residence during a drug
18 deal. Served ten years. He was also sentenced that same
19 day for a series of armed robberies.

20 In 1990, he was sentenced as a felon-in-possession
21 of a firearm.

22 The testimony in this case does not bear out the
23 picture that the defense is trying to paint of a defendant
24 as someone who is a "stand-up convict," who has done his
25 time by trying to be his own man. And there is just --

1 there is just too much evidence in the record during the
2 many days of trial to spend everyone's time this afternoon
3 going over that.

4 But the drug trafficking charge and the pressure
5 that was put to bear on many, many persons who are
6 incarcerated and are serving their time and paying their --
7 paying their price to society for whatever crime they
8 committed, to find themselves incarcerated should not
9 include the penalty of having their -- to find themselves in
10 a position where they're facing a choice of having to commit
11 other crimes in order to avoid being killed or maimed.

12 And there's just so many witnesses who testified
13 during this case whose testimony really bore out the
14 position they found themselves in when they found themselves
15 in that position that is really unforgettable.

16 The Court is called on, under paragraph two of
17 3553(a), to impose a sentence on the defendant that is long
18 enough but no longer than necessary to reflect the
19 seriousness of the offense of conviction; to promote respect
20 for the law; and provide just punishment.

21 The defense's proposed sentence in this case of
22 less than four years would not come close to meeting the
23 sentencing objectives for the conduct of which the defendant
24 stands convicted in this case. And it would not, in my
25 mind, afford adequate deterrence to criminal conduct; would

1 not protect the public from further crimes of the defendant
2 especially given his criminal history; his inability to
3 conform his conduct to society's norms; and the violence
4 towards others starting as a child and continuing throughout
5 his life, particularly, because he's not from -- from his
6 own statements, from everything that the Court has in front
7 of it, from the fact that his family appears to always have
8 been very supportive -- his father appeared at the bail
9 hearing, offered to put up significant assets to -- for his
10 release on bond during the pendency of these proceedings.
11 There's no indication anywhere that he comes from any kind
12 of abusive environment. So he's had advantages that many, I
13 have to say, most defendants that come before the Court
14 have.

15 Finally, the need to avoid sentencing disparity.
16 The Court has to take into account similarly situated
17 defendants charged with similar crimes which is, of course,
18 not a hypothetical situation, it's very difficult to do
19 that, but that may include the defendants who are charged in
20 this case, and there are 40 defendants charged in this case
21 some of whom cooperated with the government, some of whom
22 were convicted of more serious crimes, and some of whom, as
23 the defense has pointed out, served less time.

24 I would ask the parties to address this in their
25 argument before the Court. I have some information, apart

1 from what's in the -- the defense, in particular, has
2 pointed to other sentences and some information in the
3 record, the broader record than the sentencing materials
4 here, that I have become aware of, but that's always a very
5 difficult thing, the sentencing disparity issue.

6 There's certain issues about cooperation that pose
7 a difficult issue between what the -- the defense's view on
8 those defendants and the government's view is, of course,
9 quite different. So I'd invite both sides to argue about
10 the sentencing disparity factor.

11 My tentative ruling is to sentence the defendant
12 to 240 months or 20 years.

13 Mr. Green.

14 And, of course, the defendant -- before I make a
15 decision, the defendant, of course, has the right to
16 allocute; but, Mr. Green, would you like to argue any of the
17 legal issues that I've addressed?

18 MR. GREEN: Judge, with the Court's permission, I
19 would like to hear the government's argument first, if
20 that's okay.

21 THE COURT: That's fine. Okay. Mr. Wolfe or
22 Mr. Akrotirianakis.

23 MR. WOLFE: Your Honor, the government will submit
24 on the papers, except I'll attempt to address the sentencing
25 disparity issue.

1 Let's see. Ronald Slocum was not sentenced as a
2 career offender; Cleo Roy was not sentenced as a career
3 offender; Glen Filkins, the sentence was after a stipulated
4 facts trial and it related to a crime for which defendant
5 Filkins has already been sentenced to life without parole,
6 so that the Court took into consideration, in his
7 sentencing, the fact that he had already been sentenced to
8 life for the same murder.

9 Steve Hicklin's sentence addressed only the
10 possession of a knife because the other possible offense
11 conduct was, like Mr. Filkins, it was another crime for
12 which Hicklin had suffered a prior conviction and had been
13 sentenced so that the only new conduct addressed was
14 possession of the knife. The 33 months addressed only knife
15 possession.

16 Mark Nyquist -- Your Honor, as I stand here, I
17 cannot recall precisely the object of the conspiracy to
18 which Nyquist pled guilty, but I believe that it was
19 gambling. And if Your Honor wishes to know that for
20 certain, I could determine that in a few minutes at a
21 recess.

22 Rafael Gonzalez-Munoz -- the 39 months was for an
23 assault.

24 Joseph Principe is 15 months.

25 Oh, I should add that neither Roy nor Filkins, nor

1 Hicklin, nor Nyquist, nor Gonzalez-Munoz, nor Principe, none
2 of them were sentenced as career offenders.

3 Joseph Principe --

4 THE COURT: Did any of them go to trial?

5 MR. WOLFE: No, Your Honor. They're all guilty
6 pleas and often negotiated dispositions, that is, negotiated
7 sentences. Principe was a guard whose offense conduct -- he
8 was a guard at the administrative maximum facility of the
9 Bureau of Prisons, and he was convicted of allowing Aryan
10 Brotherhood members to be placed together at recreation to
11 discuss Aryan Brotherhood business.

12 And apart from that, Your Honor, unless Your Honor
13 has a question, the government will submit on the sentencing
14 papers.

15 THE COURT: Mr. Green.

16 Thank you.

17 MR. GREEN: Judge, Mr. Sahakian would like to make
18 allocution.

19 Would you like him to make that allocution before
20 I make my argument or after?

21 THE COURT: After, if you don't object.

22 MR. GREEN: Judge, it seems to me that the crux of
23 the issue for Mr. Sahakian and what would be a reasonable
24 sentence for him turns on whether or not -- how we use the
25 definition of a crime of violence to establish him as a

1 career offender.

2 And the statute itself says that:

3 "The crime of violence means any offense under
4 federal or state law, in subsection one, that has an element
5 of the use, attempted use, or threatened use of physical
6 force against the person of another."

7 And, then, of course, we have the issue, "or if
8 the offense involved distribution of drugs for greater than
9 imprisonment of one year."

10 Obviously, the first prong of that test for the
11 crime of violence, because of the general verdict form we
12 got from the jurors, is not met. So now we come to the
13 second one. And I recognize the Court's argument that there
14 were predicate acts alleged in this case that involved
15 murders, attempted murders and also distribution of drugs,
16 but I want to emphasize to the Court that the specific
17 instructions that were given the jury in this particular
18 case with Mr. Sahakian also referenced the jurors to Count 1
19 and the first 15 paragraphs of the Indictment that was also
20 given to them in deliberation.

21 And in the Indictment at very -- under "The
22 purpose of the enterprise," it was specifically alleged that
23 one of the purposes of the enterprise, at page seven of the
24 redacted Indictment on paragraph 14A, was gambling. At sub
25 paragraph 15E, bookmaking. And we had testimony in this

1 case before the jury of those things -- of those things
2 occurring.

3 THE COURT: Yet, as to Count 2, the jury was
4 specifically instructed that in order to convict your client
5 of Count 2, they had to find that they had unanimously
6 agreed regarding the type of predicate acts. And it's
7 spelled out that it had to be the murder, attempted murder,
8 or drug trafficking acts that were alleged in Count 2; so
9 that didn't leave them the option of referring back to
10 Count 1 and the gambling acts that you are talking about
11 because it limited them to what was alleged in Count 2.

12 MR. GREEN: And I'll just respectfully disagree
13 with the Court on that because the instructions went on
14 further to instruct the jury that when it stated, for
15 example, the murders and the drug conspiracy were examples
16 given to the jurors.

17 The instructions further went on and the
18 government has provided the Court even with its oral
19 instructions and its amendment to the objections at Page 58
20 of the transcript: That the Indictment need not specify the
21 predicate racketeering acts that the defendant agreed would
22 be committed by some members of the conspiracy and the
23 conduct of the affairs. Rather, it is alleged, as in Count
24 2 of the Indictment, that it was agreed that multiple acts
25 indictable under the applicable laws would be committed.

1 The jury is not limited to considering only the
2 specific racketeering acts alleged in Count 1 of this
3 Indictment, the RICO substantive count. Rather, the jury
4 may also consider evidence presented of other racketeering
5 acts committed, or agreed to be committed, by any
6 co-conspirator in furtherance of the enterprise affairs,
7 including racketeering acts which the defendant is not named
8 in the Indictment.

9 And I'm pretty sure, and I haven't been able to
10 find it, but I thought that the defense objected to the
11 Indictment going back to the jury; and that was one of our
12 concerns because it had -- as the Court is aware from our
13 motions that we filed, we felt there was a lot of
14 superfluous language that was contained in there that was
15 prejudicial that didn't apply to our client, and that's why
16 we didn't want it to go back there. But by sending the
17 Indictment back with the jury and then further instructing
18 the jury that they're not limited to those four example
19 predicate acts of attempted murder and drug trafficking and
20 further evidence being presented to them of bookmaking, of
21 gambling, and testimony given to that, it doesn't matter,
22 according to the case law, whether the evidence was
23 overwhelming that, in fact, the jurors must have decided
24 that it was the conspiracy to distribute drugs on which they
25 based their conspiracy to commit RICO because we don't have

1 a special verdict.

2 In fact, the Garcia case says that even if they
3 were found of the substantive underlying RICO case, we're
4 not allowed to look at that substantive finding of guilt
5 beyond a reasonable doubt that those jurors made in the
6 additional count to guess as to whether -- what underlying
7 acts the jurors found in support of their conspiracy to
8 commit RICO, and that's where we're at in this case.

9 And just because it may seem overwhelming or that
10 the evidence was presented and it was clear what the
11 evidence was presented, we're not in that situation here.

12 And the instructions went on further to tell these
13 jurors, you're not limited to just what we're saying here,
14 you can consider even those acts in the Indictment that he
15 wasn't even named in. And that's the full picture of what
16 this jury had to look at. And that's why I had attached to
17 our sentencing memorandum some of the jurors' notes that
18 they sent back because this was a confusing issue for them
19 on what conspiracy was. And I think taking the picture as a
20 whole and not just with respect to that one part of the
21 instructions given by the jurors, that regardless if the
22 evidence was overwhelming, the law doesn't allow us to
23 speculate as to what the overt acts the jurors found without
24 more, and we don't have it here.

25 THE COURT: The law doesn't allow us to speculate

1 as to what the jurors questions were, and most of the jurors
2 questions seemed to be about what the burden of proof was.

3 MR. GREEN: And I just wanted to make that point
4 with the Court.

5 I wanted to also point out to the Court that I
6 recognize that the government's belief is that Mr. Sahakian
7 is this leader of a very bad prison gang, and that they tend
8 to side with what their confidential informants have told
9 them or what the Bureau of Prisons feels that he is, but I
10 also have the belief the other way around, that the inmates,
11 especially in this type of situation, as we have seen even
12 in our H unit hearing, these type of inmates will do
13 anything to manipulate the system just to do their time,
14 make their time easier.

15 But that having been said, the government's belief
16 and my belief are really irrelevant. For the purposes of
17 sentencing, we can only look at what the record has before
18 us, and the instructions that were given to the jury, and
19 the general verdict that the jurors returned.

20 The other thing that I believe the law compels us
21 to do is to look at the co-defendant sentences as to what
22 they got. And one of the co-defendant sentences that did
23 go --

24 THE COURT: To the extent that they're similarly
25 situated. They have different criminal histories and their

1 charges may be different.

2 MR. GREEN: But the Court still has to consider
3 what the co-defendants got in their sentences in order to
4 come to a reasonable sentence for the defendant. I believe
5 that's the law.

6 In fact, I think there was -- and I didn't bring
7 the case with me, I apologize, but I believe there was a
8 case, United States versus Daas, D-a-a-s, where Judge Carter
9 was sitting on the Court of Appeals, where he remanded a
10 case because the sentencing judge did not take into
11 consideration the sentences of the co-defendants, even
12 though they were government witnesses.

13 And I believe that's the spirit of the Sentencing
14 Guidelines in and of themselves on this disparity issue.

15 And the one that -- and I'm sure the government's
16 getting tired of me saying this, but the one that sticks out
17 for me is Mr. Slocum. Mr. Slocum went to trial. He was
18 convicted on Count 2, just as Mr. Sahakian was, and he was
19 convicted after he entered into a plea agreement, after he
20 had a hung jury --

21 THE COURT: The jury hung --

22 MR. GREEN: -- as to Count 2. And he received a
23 sentence of 151 months. And I would point out to the Court
24 the evidence was much, much, more overwhelming about
25 Mr. Slocum's act of participation with respect to

1 communications in drug trafficking with the Aryan
2 Brotherhood.

3 In fact, we had actual audio recordings from the
4 penitentiaries where that was identified in the recordings
5 themselves, and we also had the testimony that the Lewisberg
6 killings of Joiner (ph) and Salom (ph) would not have
7 happened had it not been for the act of participation of
8 Mr. Slocum sending the message on, either in a card or
9 whatever that message -- or with the DC, or whatever the
10 message was, there's been no evidence to the contrary that
11 he did not do that. And -- so if we're going on the
12 standard of the evidence is overwhelming, it was much more
13 overwhelming with Mr. Slocum, his culpability was much more
14 obvious in relationship to Mr. Sahakian, and he received a
15 term of imprisonment of 151 months.

16 THE COURT: Well, 151 months is how many -- it's
17 50 months -- I'm sorry, 151 months is about 90 months less
18 than my intended sentence in this case. Someone who is not
19 a career offender, someone who pled guilty. So you have to
20 take those factors into account in terms of disparity in
21 sentencing, as well as the factors that you pointed to.

22 MR. GREEN: Judge -- and I don't have the
23 information in front of me, but it's hard for me to imagine
24 with Mr. Slocum's record that he could not be found to be a
25 career offender. The facts supported him to be found a

1 career offender because he was convicted of the same offense
2 of Mr. Sahakian; therefore, the underlying offense, together
3 with the evidence that was in his case, and in this case,
4 was that he was actively involved in the drug distribution,
5 as well as passing on messages to commit violence against
6 other inmates.

7 THE COURT: I don't know what his past criminal
8 history was, though.

9 MR. GREEN: Okay. So we come back -- I guess what
10 I'm saying is we come back to where we started before -- how
11 do we define Mr. Sahakian as a career criminal offender.
12 And the only thing that we can possibly hang our hat on is
13 the drug distribution, but to do that, we have to ignore the
14 allegations that were made in the Indictment; the
15 instructions where the jurors were told that they weren't
16 limited to just those two predicate acts of drug
17 distribution or attempted murders, and the evidence that was
18 presented to the jury. And I think it's error to do so.

19 THE COURT: When you say the evidence that was
20 produced to the jury, as I understand your argument, you're
21 referring to what I call the conflicting evidence. The fact
22 that -- for example, you pointed to some of the testimony of
23 Al Denton, the government's witness. Al Denton's
24 testimony -- you know, I don't know how I would encapsulate
25 that testimony. Some parts of it were really unforgettable,

1 but I think it might not be an unfair description of part of
2 his testimony to in part say that Al Denton would describe
3 himself as being -- well, would ascribe to himself most of
4 the power in the Aryan Brotherhood, at least for a certain
5 periods of time.

6 So to the extent that the defense relies on his
7 testimony as downplaying the importance of any other member
8 of those who were indicted in this case, I don't know what
9 Mr. Denton testified in the other trials, but I'd be
10 surprised if he didn't give that testimony or some version
11 of that testimony in all of the cases.

12 I mean, there is conflicting testimony about what
13 Mr. Sahakian's precise role in the hierarchy, in the
14 organizational chart was, but, you know, I don't know that
15 that was that critical certainly for this conviction to
16 stand. It's not. And there certainly was substantial
17 evidence to support the conviction as to the drug
18 trafficking charge. There was very substantial evidence
19 about that.

20 MR. GREEN: And, I guess, that's my objection,
21 Judge. I don't think at this point, with the general
22 verdict form, that we're allowed to speculate as to what
23 evidence supports the conspiracy to commit RICO. We just
24 have to take the conspiracy to commit RICO in its entire
25 context, where we had a trial that gambling and bookkeeping

1 was alleged and that evidence was presented during the
2 trial. Regardless of how slight it was and how overwhelmed
3 it was by other evidence, we're not allowed to engage in
4 that type of analysis, but to the extent the Court thinks
5 I'm basing my argument mostly on Mr. Denton, I'm not. And I
6 want to emphasize for the record that I found a lot of
7 credibility problems with a lot of the inmate witnesses and
8 therefore I would reference to the Court to officers like
9 Officer Youkman and Officer Aponte who came in, as well as
10 the documented evidence that we had from the Bureau of
11 Prisons as to where Mr. Sahakian was housed when significant
12 events occur.

13 And to the lack of documentation, after sharing
14 how they documented other inmates and their behavior, the
15 lack of documentation that we had for Mr. Sahakian, that
16 taking as a whole and looking at the whole forest as opposed
17 to individual trees, we see that it's not quite as -- the
18 true scenario and the true picture is not like a lot of the
19 inmate witnesses testified to.

20 I've had a problem since we had the H Unit and
21 this is where it kind of really stuck for me is when I
22 called Mr. Stein to the stand, in the H unit. I'm sure the
23 Court remembers Mr. Stein. He was a manipulative
24 individual, and I can't get into somebody's mind like that
25 as to why they would come forward, other than having hearing

1 what it's like to live -- knowing that they're trying to get
2 out of the way they are living in a confined environment or
3 for no other reason, just because they're bored. I could
4 speculate all day as to why they testify the way they do,
5 and why they say the things that they do. I say that
6 because that makes me want to make this argument. We have
7 to focus then on the objective evidence that was presented
8 during trial.

9 THE COURT: Such as the letter from your client
10 that was presented and argued extensively during closing
11 argument?

12 MR. GREEN: To Mr. Hawley.

13 THE COURT: Yes.

14 MR. GREEN: Judge, the only other thing that I
15 would want to argue to the Court -- and the Court's already
16 made reference to it -- I want to emphasize again the health
17 condition of my client and emphasize that he is on some
18 serious medication for his back and his back keeps on
19 getting worse. I want to make sure I got that in the
20 record, and the Court's obviously acknowledged it.

21 At this point, Mr. Sahakian is ready to allocute.

22 THE COURT: Mr. Sahakian, would you prefer to
23 remain seated?

24 THE DEFENDANT: Please.

25 Before I say anything to you, Judge, I would like

1 to ask you, am I limited by anything what I can say? I
2 mean, can I respond to some of the things that you said?

3 THE COURT: You may.

4 THE DEFENDANT: Okay. The first thing I want to
5 respond to is where you said that I lied up on the stand and
6 said that something was in a tape that you didn't see that
7 it was there. I never said a Bureau of Prison guy put
8 evidence, number one, in my property. I don't know what the
9 man put in my property, but depict -- how you guys talk in
10 court all the time, the evidence stand for itself. If
11 somebody looks at the point in the tape that was stood when
12 Mr. Green was cross-examining on me on the stand, it's clear
13 that he put a white piece of paper in that box. There was
14 no reason for him to do that.

15 I don't know what it was. I seen it, and I
16 brought it to the attention of my attorney. They didn't
17 understand what it was. I didn't put that paper in my box.
18 That wasn't my paper. I didn't type it up. I didn't shrink
19 it, and I didn't lie about it. I didn't lie about it in the
20 first hearing, I didn't lie about it in the second hearing.
21 I didn't say what it was. I'm just saying somebody put
22 something in there, and you can see it at that spot on that
23 tape if somebody takes the time to look at it. We never got
24 a chance to examine it or have the tape tested or do
25 anything like that, so I'm sure it could be done and

1 somebody else see it.

2 Where you said that my sickness is caused by using
3 drugs while I've been in prison. I just did almost 20 years
4 in Marion. There is no drugs in Marion. I wasn't using
5 drugs in Marion. I took urinalysis tests an average of two
6 times a month, so whole time I was there, over 323
7 urinalysis tests, never tested dirty for urine test in
8 Marion prison.

9 When I went to Leavenworth, I was there for seven
10 months. I was in the hole for four of those. I didn't have
11 anything to do with drugs when I was in Marion. I never got
12 a cent from it. If I knew what was going on, I knew what
13 was going on, and I just specifically did not touch it, did
14 not take any money from it.

15 I used drugs when I was in Leavenworth. Because
16 I'm sick now isn't caused from using drugs or forcing any-
17 -- and I never forced nobody to do anything about any drugs.
18 The guys that got on that stand and said people forced them
19 to do stuff. They didn't say I forced them. They didn't
20 say that I made them do anything.

21 Hawley -- I didn't even know that guy, but we had
22 a trial about all that. You see the things a little bit
23 different than I do. Like, right now, when you said the
24 letter to Hawley. I did send a letter to Hawley, just like
25 I testified to. I sent a letter to him. I told him, "Don't

1 send my mail over here to me opened. The bad thing I used
2 in there, I tried to intimidate him by saying Brand
3 business. The government blew that up into being it was
4 something -- I told him in there people are hauling these
5 letters around in here. You brought in a kite from a friend
6 of mine from outside, you sent it over to me opened up.
7 That's exactly -- it didn't have nothing to do with anything
8 illegal. I was telling the guy, and I was trying to scare
9 him into not doing that kind of stuff with my mail. It
10 wasn't a criminal act. Didn't have anything to do with any
11 crime. He got up there and said it did, and they let him
12 out the first time for it, and he got out and he put a
13 tattoo on his chest of a shamrock and went and told people
14 on the streets that he was Aryan Brotherhood and got in --
15 you know, he wasn't scared. He got up here and bamboozled
16 everybody, and every time he got in the courthouse and he
17 points the finger at other people and the government let's
18 him go home. You're going to get a whole lot of Rule 35s
19 about people going home, I'm sure.

20 And I have one other thing. Am I to believe that
21 if you give me 20 years, the government is not going to try
22 me?

23 THE COURT: I don't know. That is not my
24 decision.

25 THE DEFENDANT: Because I want to talk to you

1 about some serious stuff that has to do with the conviction
2 for conspiracy, but if I've got to go to trial again, I
3 can't do that. And I wrote some down. Can I read it to
4 you?

5 THE COURT: You have a right to speak on anything
6 that affects this case.

7 THE DEFENDANT: I get a little shook up when I
8 talk, so I wrote it down so it would be more clearer.

9 THE COURT: That's fine. I can read it. Rather
10 than you reading it to me, I can read it.

11 THE DEFENDANT: I can read it to you.

12 THE COURT: Whichever you prefer.

13 THE DEFENDANT: "First thing I would like to say,
14 Your Honor, is I have some serious issues that I feel go
15 directly to the circumstances of this conspiracy charge I've
16 been convicted of. It is information that I feel this Court
17 must hear if it is going to attempt to sentence me fairly.
18 I have thought about it long and hard and tried to figure
19 out in my mind if there was a way I could bring these issues
20 out and not have it damage my right to a fair trial on the
21 charges that the government has told my attorney I have to
22 have another trial on. And I can't see how I can do that.
23 I'm caught in a serious catch 22 situation. Instead of my
24 being able to go to sentencing on a completed determination
25 of crimes I have allegedly committed that arise from the

1 same Indictment, I'm going to sentencing piecemeal on a
2 charge from an Indictment that is pending before this court.
3 If I speak to this Court concerning this conspiracy
4 conviction to present evidence in mitigation to try to show
5 this Court that the sentence that the government is asking
6 for is not fair, then the government -- from the
7 government's own lips they said they would use it to impeach
8 me should I testify again.

9 This count I'm being sentenced for today is the
10 Siamese twin of the count still pending; and if I attempt to
11 separate them today to save time on this sentence, then I
12 risk losing the other one. My attorney has duly warned me
13 that the issues I wish to bring to the Court's attention
14 before sentence is imposed could cause damage in my retrial
15 and therein lies my dilemma.

16 What right should I sacrifice? The right to speak
17 to the Court before my liberty is taken, or should I
18 surrender my right not to incriminate myself and open myself
19 up to impeachment should I decide to testify in my own
20 defense in my next trial. And with those issues in the
21 forefront of my mind, I would ask that this Court not force
22 me to choose between which right to relinquish but rather
23 preserve all my rights in this instance. That could be
24 accomplished simply by postponing sentencing on this
25 conspiracy count.

1 Now, you already said that you aren't going to do
2 that, but the government said in the papers that he brought
3 to me that I read that they said they're not going to use
4 something against me. Well, what I've got to say, they will
5 impeach me with but it goes straight to what this case has
6 to do -- is about, and it has to do with the conspiracy. So
7 you got -- I would like to know, am I going to be tried
8 again? Because I do have things that I would like to say to
9 the Court that is important.

10 THE COURT: As you know, I'm not your lawyer. I
11 can't give you legal advice on what to do. And I've already
12 ruled that I'm not going to continue this sentencing. And
13 as you heard me say, I took that motion very seriously, and
14 I issued a written ruling on it. If you want a few moments
15 to discuss your decision about what to say with your
16 attorney, I'll take a recess now.

17 THE DEFENDANT: Well, he already knows. We've
18 already talked about that.

19 THE COURT: Well, I'm going to take a short
20 recess. Your attorney has now seen my written decision, and
21 I'll give you a few moments to talk to him; and then if
22 there's anything further you want to say before I sentence
23 you, I'll give you that opportunity.

24 *(Recess taken at 4:32 p.m.;*

25 *proceedings resumed at 4:45 p.m.)*

1 THE COURT: All right. Mr. Sahakian, you may
2 continue.

3 THE DEFENDANT: I'm done.

4 THE COURT: You have nothing else to say at this
5 time?

6 THE DEFENDANT: No.

7 THE COURT: All right. Mr. Wolfe, did you wish to
8 respond to any of the arguments made by Mr. Green?

9 MR. WOLFE: Unless Your Honor has a question, the
10 government submits.

11 THE COURT: All right. At this time I would abide
12 by my tentative ruling and, for the reasons that I've
13 stated, sentence the defendant to 240 months, followed by a
14 three-year period of supervised release. Find that no fine
15 should be imposed as the defendant does not have the ability
16 to pay a fine.

17 Is there any legal cause why judgment should not
18 now be imposed?

19 MR. GREEN: Other than the reasons we've
20 previously stated, Judge, no.

21 THE COURT: Then, would you and your client please
22 stand at the lecturn.

23 THE DEFENDANT: I got to sit this one out.

24 THE COURT: You're not feeling well enough to
25 stand at the lecturn?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. The Court, having
3 considered the sentencing factors set forth at 18, United
4 States Code, Section 3553(a), as well as the advisory
5 Sentencing Guideline Range, the Court imposes sentence as
6 follows:

7 It's ordered that the defendant shall pay to the
8 United States a special assessment of \$100 due immediately.

9 The Court finds that all fines are waived, as the
10 defendant does not have the ability to pay a fine.

11 And pursuant to the Sentencing Reform Act of 1984
12 it is the judgment of the Court that the defendant, David
13 Michael Sahakian, is hereby committed on Count 2 of the
14 First-superseding Indictment, to the custody of the Bureau
15 of Prisons, to be imprisoned for a term of 240 months.

16 The sentence shall be served consecutively --

17 Well, the defendant is not serving any
18 undischarged term of imprisonment; correct?

19 MR. WOLFE: That's correct, Your Honor.

20 THE COURT: Upon release from imprisonment, he
21 shall be placed on supervised release for a term of three
22 years, under the following terms and conditions:

23 He shall comply with the rules and regulations of
24 the United States Probation Office and General Order 318.

25 He shall refrain from any unlawful use of a

1 controlled substance and submit to one drug test within 15
2 days of release from imprisonment, and at least two periodic
3 drug tests thereafter, not to exceed eight tests per months,
4 as directed by probation.

5 And during the period of supervision, he shall pay
6 the special assessment, in accordance with this judgment's
7 orders regarding such payment.

8 He shall cooperate in the collection of a DNA
9 sample from the defendant.

10 And the defendant may not associate with anyone
11 known to him to be a member of the organization known as the
12 Aryan Brotherhood or the Brand.

13 Is there a request for placement for your client's
14 medical condition?

15 MR. GREEN: There is, Judge, but I don't know
16 which facility is best -- I think his back situation is the
17 most severe at this point in time, and I don't know if that
18 would be Springfield, Missouri, or some other -- I know
19 there's a location in LA also, only because I'm aware of
20 another incarcerated inmate who had back surgery, I think
21 during the Aryan --

22 THE COURT: Is it Daniel White?

23 MR. GREEN: That wasn't the one I was thinking of
24 but maybe the Court is aware --

25 THE COURT: All right. Well, he should be -- the

1 Court will direct that he be transferred as early as
2 possible to a federal medical center for assessment or
3 treatment for his degenerative disk disease and possible
4 surgical treatment.

5 MR. GREEN: Thank you, judge.

6 THE COURT: And to be either -- and the Court
7 recommends that that transfer be either to the FMC at
8 Springfield?

9 MR. GREEN: Springfield, Missouri, or -- there's
10 one also here in L.A., I believe.

11 THE COURT: I'll consult with the marshals about
12 the one in Los Angeles and put that wording in the Judgment
13 and Commitment Order.

14 Mr. Sahakian, you have the right to appeal. You
15 have the right to ask the Clerk of Court to file your Notice
16 of Appeal and to ask that you be allowed to file it without
17 paying the usual required fees. With very few exceptions
18 any Notice of Appeal has to be filed within ten days from
19 today's date.

20 Do you understand your appeal rights?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Now, I believe I signed the latest
23 stipulation on the new trial -- on the next trial date,
24 although, I think you submitted one, but I think I already
25 signed one, but it's in September.

1 MR. GREEN: I don't believe we've gotten together
2 yet on the exact date, have we?

3 THE COURT: There is a trial date in September.

4 MR. GREEN: There is one in September, yes. I
5 don't remember anything subsequent to that, though.

6 MR. WOLFE: I thought you told me any date in
7 September was okay.

8 MR. GREEN: I did.

9 MR. WOLFE: We did file a stipulation and the
10 Court --

11 MR. GREEN: I apologize, Judge.

12 Yes, okay.

13 THE COURT: All right. So we're set for trial, I
14 think it's September the 8th, but I'm not sure. I can't
15 remember right now. But if there's any changes in that, you
16 need to tell me right away.

17 MR. WOLFE: Your Honor, I will take up with the
18 office whether there will be a retrial, and I expect to file
19 a notice within a week or two, at the most, depending on
20 when the decision makers can attend to the question.

21 THE COURT: And then -- I mean, if either side
22 needs to stipulate or move for a continuance, I need to know
23 that, too. If the government plans to go ahead with the
24 trial, I just need to know that because we'll need to soon,
25 again, send out questioning and do all of those things and

1 gear back up. September's not that far away, even though it
2 seems like it right now.

3 So we'll need to set a status conference date in
4 the near future. If I don't hear anything quickly, I'm
5 going to set out a notice for a status conference date,
6 which can happen telephonically, of course; but I'll
7 probably set that out in about six weeks. But I'll be in
8 trial until I think the end of July. So I don't want to let
9 it escape my attention. So don't be surprised if you get
10 something from the Court setting a status conference before.

11 MR. WOLFE: Very well, Your Honor.

12 MR. GREEN: Thank you, Judge.

13 Judge, may I revisit the back issue? Mr. Sahakian
14 just informed me -- I hadn't been aware -- that he's been in
15 contact with his medical personnel, I guess, and he has some
16 information on --

17 THE DEFENDANT: For the problem that I have, they
18 have some different treatments now that the bureau has been
19 doing, and I would like to give them the opportunity to
20 write it down so I don't get sent to, like, Springfield and
21 then they want to do that treatment there where they're
22 doing a treatment at a different place, but I don't know the
23 name of it, but they're doing a different treatment where
24 they don't have to do major surgery.

25 THE COURT: So do you want to give your lawyer the

1 name of the place?

2 THE DEFENDANT: I don't have it with me right now,
3 but I would like to have a chance to do that so you don't
4 make the marshals write it down and then they send me over
5 there before --

6 THE COURT: Can you get it to Mr. Green in the
7 next day or two?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. We'll wait to send the
10 Judgment and Commitment Order out until we've heard from
11 your attorney.

12 MR. GREEN: Thank you, Judge. I am staying over
13 to talk to Mr. Sahakian about some of the issues that arise
14 out of sentencing.

15 So do you think we can have it by tomorrow?

16 THE DEFENDANT: Yes.

17 THE COURT: Just let Ms. Dillard know, and then
18 we'll get it in the Judgment and Commitment Order.

19 MR. GREEN: Thank you.

20 THE COURT: Thank you.

21 (At 4:59 p.m., proceedings were adjourned.)

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4 *CERTIFICATE*
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7 *I hereby certify that pursuant to Section 753,*
8 *Title 28, United States Code, the foregoing is a true and*
9 *correct transcript of the stenographically reported*
10 *proceedings held in the above-entitled matter and that the*
11 *transcript format is in conformance with the regulations of*
12 *the Judicial Conference of the United States.*

13 *Date: October 15, 2009*
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LISA M. GONZALEZ, U.S. COURT REPORTER
17 *CSR NO. 5920*
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PROOF OF SERVICE

I, the undersigned, declare that I am a resident or employed in Los Angeles County, California; that my business address is the Office of the Federal Public Defender, 321 East 2nd Street, Los Angeles, California 90012-4202, Telephone No. (213) 894-2854; that I am over the age of eighteen years; that I am not a party to the action entitled above; that I am employed by the Federal Public Defender for the Central District of California, who is a member of the Bar of the State of California. I hereby certify that service of the foregoing Motion to Vacate will be accomplished by the procedure set out in Local Rule 4-4 and Appendix C.

I further certify that, pursuant to the request of the Respondent, a copy of the PACER notification of the above filing will be forwarded to Respondent's counsel by email, as follows:

Cathy Ostiller
United States Attorney's Office
312 N. Spring Street
Los Angeles, CA 90012
Cathy.Ostiller@usdoj.gov

This proof of service is executed at Los Angeles, California, on June 18, 2016.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Brianna Fuller Mircheff
Brianna Fuller Mircheff